# The Incorporated Accountants' Journal

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## The Society of Incorporated Accountants and Auditors

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# Professional Notes.

THE Budget speech of the Chancellor of the Exchequer contained little which had not been anticipated. Income Tax remains as before and apart from a reduction of ½ per cent. in the duty on new capital issues and 1 per cent. on arrears of Estate Duty, the chief item which will interest taxpayers is the reversion to the old method of collecting Income Tax in two equal portions instead of three-quarters of the tax in the first instalment and one quarter in the second. This is estimated to reduce the revenue for the year by about £12,000,000.

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The position with regard to Co-operative Societies remains in abeyance. The Chancellor stated that he had met representatives of the Co-operative movement but that no solution had yet been arrived at. Discussions are still proceeding and the Chancellor hopes to reach an agreement before the introduction of the Finance Bill. He made it clear, however, that in the opinion of the Government the matter could not be allowed to rest where it is.

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The estimated revenue for 1933-34 on the basis of existing taxation shows a total decrease of about £32,000,000, of which £11½ millions is represented by Income Tax, £9½ millions by Surtax and over £2 millions under the head of Estate Duties, whilst Excise shows a drop of nearly £8 millions. Against this there is the saving of interest on the National debt through the conversion of the War Loan, but in view of all the circumstances the Chancellor could not see his way to grant any relief on direct taxation. The only substantial relief has relation to indirect taxation and takes the form of a reduction of what is equivalent to 1d. per pint in the duty on beer. The text of the more important parts of the Chancellor's speech will be found in another part of this issue.

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The Annual Meeting of the London Chamber of Commerce was held on April 25th. In the course of a forcible address Lord Leverhulme said, "the world can only thrive by nations trading with each other and we cannot all go on indefinitely cutting down imports and comforting ourselves because our reduction in imports is greater than our shrinkage in exports. Ultimately, we must be forced to find a monetary system which will render unnecessary this continual search after the impossible, whereby every country is trying at one and the same time to have a surplus of exports over imports and is refusing to take its credits out of other countries in the only form in which they really can be taken out, namely, in goods and services."

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At a subsequent stage of the proceedings a cordial vote of thanks was passed to Mr. E.

Cassleton Elliott, the President of the Society of Incorporated Accountants and Auditors, for his services as one of the Honorary Auditors of the Chamber for the past three years, and Mr. Walter Holman, Incorporated Accountant, was elected an Honorary Auditor in his place, together with Mr. Harold E. Barton, Chartered Accountant, who was re-elected for a third year of office.

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An Act has just been passed entitled "Foreign Judgments (Reciprocal Enforcement) Act," the object of which is to facilitate the recovery in other countries of sums for which judgments have been obtained in Great Britain. The new Act is the result of the recommendations of a committee appointed by the Lord Chancellor in 1931 under the chairmanship of Lord Justice Greer, which was asked to consider :—

(1) What provisions should be included in conventions made with foreign countries for the mutual enforcement of judgments on a basis of reciprocity, and

(2) What legislation is necessary or desirable for the purpose of enabling such conventions to be made and to become effective, or for the purpose of securing reciprocal treatment from foreign countries.

The idea is that if this country can secure reciprocal advantages from other countries the Government by means of Orders in Council will put the Act into effect here. Hitherto foreign creditors have been able to enforce in the British Courts judgments obtained in foreign courts, whilst British merchants have been unable to enforce judgments obtained in our Courts against foreign debtors abroad.

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For the first time the question of the protection afforded to a limited company by the Rent Restriction Acts came up for decision last month in the case of *Reidy and Others* v. *Walker and Others*. The point at issue was whether a limited company could be regarded as being in occupation of a dwelling house. In this case the company was the tenant and the house was occupied by a caretaker. On behalf of the landlords, it was argued that the Rent Restriction Acts only protected tenants who were actually living in the dwelling house and that could not include a company. If a company had any dwelling house, which was disputed, it was the registered office.

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Mr. Justice Acton, in delivering judgment, said that the Court of Appeal in a series of decisions had taken another view and had come to the conclusion, clearly expressed in *Skinner* v. *Geary*, that the protection afforded to a tenant was only applicable to a person who was in occupation in a limited sense—in other words, that the house was his home to which, although he might be absent for a time, he intended to return. Applying that test to the present case, he said that if an individual had been the tenant and had put a caretaker in possession he would not have been entitled to the protection of the Act, yet it was said that the limited company were entitled to such protection. In his Lordship's opinion no limited company could be described as the tenants of a house which was their home and to which they intended to return.

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In delivering the judgment of the Court of Appeal in the case of *In re F. D. Sassoon (deceased)*, some interesting observations were made by the Master of the Rolls regarding the method of interpreting legal documents where the meaning is obscure. The merits of the case we do not propose to deal with as they have no particular interest to our readers. The decision turned upon the interpretation of a clause in a settlement. The effect of the clause on its simple reading was not in dispute, but it was claimed on behalf of the Crown that the words of the clause should be controlled by the purpose revealed in the recitals and must be so construed. The Attorney-General cited a number of cases in support of this contention and claimed that the doctrine laid down by Lord Chief Justice Hale in *Wilkinson* v. *Tranmarr* should be followed, namely, that "Judges ought to be curious and subtle to invent reasons and means to make acts effectual according to the just intent of the parties." The Master of the Rolls said that he had relied on the authorities collected in "Norton on Deeds," amongst which were the following :—

> "Omitted words may be supplied ; words may be transposed ; parentheses may be inserted ; and false grammar or incorrect spelling disregarded, if the intention of the parties sufficiently appear from the context."
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> "If the recitals are clear and the operative part is ambiguous the recitals govern the construction. If the recitals are ambiguous and the operative part is clear the operative part must prevail. If both the recitals and the operative part are clear but they are inconsistent with each other, the operative part is to be preferred."

Continuing, he said that in the case under review the recitals were plain and revealed the purpose

of the deed explicitly. The operative part read in the grammatical and ordinary sense of the words was also clear. In these circumstances his Lordship said that if the Court were to construe the settlement as carrying into effect the purpose or motive which was contained in the recitals it would be rejecting the words used by the settlor and rectifying the deed under the guise or pretence of construing it. The other Judges concurred and the appeal of the Crown accordingly failed.

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What is the liability of a company for a fraudulent certification of transfers by its registrars? This was the question which the Court of Appeal had to decide in an appeal from the decision of Mr. Justice Avory in the case of *Kleinworts* v. *The Associated Automatic Machine Corporation, Limited.* Mr. Justice Avory had held that the company was liable for the fraudulent certification by its registrars on the ground that the certification of transfers was within the scope of the authority of the registrars (who in this case were a company called Secretarial Services Limited), and that the Automatic Machine Corporation was liable for the fraud of its agents. This decision has now been reversed by the Court of Appeal.

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Lord Justice Scrutton, in delivering judgment, said the Court was bound by the decision of the House of Lords in an exactly similar case. In that case Lord Macnaghton said that in permitting its secretary to certify transfers it could not be supposed that a company authorised the secretary to do more than give a receipt for certificates actually lodged in the office, and he could not think that a company was estopped by the certificate of its secretary if he gave a receipt or acknowledgment for certificates which had not been lodged with him. Treating the representation as that of the registrars in this case, the company which employed them was not liable for their action outside the scope of their authority. The other Judges concurred, and the appeal was allowed, with costs.

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The Public Trustee was successful in an action against the Bank of Montreal in which he claimed to recover damages for the transfer of certain shares on instructions which proved to be forged. Mr. Justice Farwell, in giving judgment, said that it was the duty of a bank to take reasonable steps to satisfy itself that the signatures of its customers were genuine. In the case before him he was satisfied that a careful investigation by some person at the Bank of Montreal would have shown that there was a very grave doubt as to the genuineness of the signature, and he held that the bank had failed in its duty and that the Public Trustee was accordingly entitled to recover possession of the shares so transferred.

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Some drastic proposals have been put forward by the French Minister of Finance in relation to the assessment and collection of Income Tax. Under these proposals Income Tax in France is in future to be assessed not only on the taxpayer's own sworn declaration of income, but also on a number of external indications of revenue based upon rules laid down for the guidance of the assessing authorities. For instance, when the taxpayer has sent in his annual return the officials are to make another assessment of their own. If the total income declared is less than the official assessment the latter is to prevail. If it should be more, the presumption appears to be that the official assessment will not be brought into operation. Amongst the external indications of income the rental value of the house occupied by the taxpayer is to be trebled so that a person paying an annual rent of £250 will be assumed to have an income of at least £750. Under the proposed new regulations any taxpayer who fails to pay or whose statement of income does not conform to the official assessment is liable to fine and imprisonment.

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The undesirable employment of unqualified auditors was the reason assigned by magistrates for a loss of over £2,000 which occurred in the case of a Friendly Society by the defalcations of its former secretary. Commenting upon this, the Registrar of Friendly Societies in his annual report says he is more than ever convinced of the desirability of employing qualified auditors to audit the accounts and returns of Friendly Societies. A large number of the returns submitted, he adds, are obviously incorrect and an immense amount of trouble is involved in consequence. In this connection, the Registrar states that the Independent Order of Oddfellows, Manchester Unity, have decided that in future the audit of the Unity accounts shall be conducted by a firm of Chartered or Incorporated Accountants instead of by three members of the Society chosen at annual conferences.

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With reference to our Professional Notes of March last, a further development has taken place with regard to the requirement of the New York

Stock Exchange that after July 1st next all listing applications from companies must contain an accountant's certificate for the most recent fiscal year. The President of the New York Stock Exchange has addressed a letter to every company whose securities are listed, a copy of which will be found in another column together with a response by a group of American accountant firms. In order to appreciate the position, it has to be borne in mind that the audit of the accounts of public companies in America is not carried out on the same uniform basis as in this country; hence the reason for the stipulation in the letter of the Stock Exchange President and the response thereto by the group of American accountants as to the scope of the audit. The views expressed in these documents are of considerable interest.

## PERSONAL LIABILITY OF RECEIVERS.

AT a recent sitting of the Manchester County Court in *Robinson's Carlton Brewery Limited* v. *Nicholas*, there was a claim of £30 15s. for goods supplied to the defendant, who was receiver and manager of Wineshops (1926) Limited. The plaintiffs contended that although the orders indicated that the defendant was receiver and manager, there was no statement that he was acting on behalf of the company, and therefore he was personally liable. In reply the defendant said that every document showed that he was acting as agent for the company. In giving judgment for the defendant (the receiver and manager), the Judge held that the orders were given by the company whose name was upon the documents, and that the defendant had added his name to show that as receiver and manager he had authorised the issue of the company's order, following the principle of *Cully* v. *Parsons* (1923). In that case a company issued a debenture charging the whole of its assets, and by a condition endorsed on and forming part of the debenture it was provided that at any time after the principal moneys thereby secured became payable the registered holder of the debenture could from time to time by writing under his hand appoint any person to be a receiver of the property to be charged by his debenture. Also that a receiver so appointed should have power (*a*) to take possession of, collect and get in the property charged by the debenture; (*b*) to carry on or concur in carrying on the business of the company; (*c*) to sell or concur in selling any of the property charged by the debenture, and to carry any such sale into effect by conveying or assigning in the name and on behalf of the company; (*d*) to make any arrangement or compromise which he should think expedient in the interest of the debenture holder; and that all moneys received by such receiver should, after providing for the matters specified in sect. 24 (8) of the Conveyancing and Law of Property Act, 1881 (now sect. 109 (8) of the Law of Property Act, 1925), be applied in and towards satisfaction of the debenture. The above provisions were to take effect as and by way of variation of sects. 19-24 of the Act of 1881 (now sects. 101-109 of the Act of 1925), and the holder of the debenture in making or consenting to such appointment was not to incur any liability to the receiver for his remuneration or otherwise.

The principal moneys secured by the debenture having become payable, a receiver was appointed by the debenture holder. In carrying on the business the receiver incurred a debt for work done which could not be paid out of the assets when realised. It was held that the effect of the last provision in the condition was to relieve the debenture holder of liability not only to the receiver, but also to other persons for the acts of the receiver and to render the receiver the agent of the company.

In the earlier case of *Deyes* v. *Wood* (1911), the sections of the Conveyancing Act, 1881, intended to be incorporated were left blank in the condition, but the Court came to the conclusion that it was intended to incorporate sect. 24, which would *prima facie* have the effect of constituting the receiver the agent of the mortgagor. But then, after referring to the other provisions in the condition, which closely resembled those in *Cully* v. *Parsons*, and particularly to the words incorporating the sections of the Act of 1881 as varied and extended by the rest of the condition, the Court came to the conclusion that the total effect of the condition was to render the debenture holders liable to the receiver as their agent. That is a decision of high authority, but the result appears to have been that an alteration was made in the common form debenture adopted down to that time. Persons lending money to a company were not ready to accept debentures which rendered them personally liable for the acts of receivers appointed by them. They had thought, probably, that the incorporation of sect. 24 of the Act of 1881 would be enough to protect them, but the Court of Appeal having decided to the contrary, an addition was made to the common form debenture, which appeared in the debenture in *Cully* v. *Parsons*. After the

passage incorporating certain sections of the Act of 1881, subject to variations, the significant words were added: "And the holder of this debenture shall not, in making or consenting to such appointment, incur any liability to the receiver for his remuneration or otherwise."

The actual decision in *Deyes* v. *Wood* was that the debenture holders who appointed the receiver were liable for his remuneration, but the principle upon which that decision was founded was that the receiver was their agent, so that they would also be liable to all persons dealing with the receiver.

## BUILDING SOCIETIES OF YESTERDAY AND TO-DAY

[CONTRIBUTED.]

SINCE the Building Societies Act of 1874 certain associations of persons for the purposes of gain have been allowed to be incorporated with perpetual succession and a common seal, and have thereupon been subject to statutory provisions in many respects analogous to, but in many other respects entirely different from, the statutory provisions affecting companies. The object for which newly established societies may be so incorporated was defined by sect. 13 of the Act as that of "raising by the subscriptions of the members a stock or fund for making advances *to members* out of the funds of the society upon security of freehold, copyhold or leasehold estate by way of mortgage."

Persons joining the early building societies that used to be certified under the Building Societies Act, 1836, were of a type which did not enlist members with the fixed object either of investing or borrowing. Members began by paying subscriptions on shares as an investment, and if in the course of time they desired advances on real or leasehold estate they obtained advances under the conditions specified in the rules. The theory then was that the member received in anticipation the ultimate value of the shares for which he was subscribing and gave mortgage security for the continued maintenance of his subscriptions. In the case of terminating societies (and the earliest building societies were all terminating) the period of subscriptions depended on the duration of the society, and that in turn depended on the accumulation of sufficient profits to pay all unadvanced members the nominal value of their shares. Naturally advanced members were made to swell the profits by paying additional subscriptions in the nature of interest known as "redemption money."

There were many unsatisfactory features about these earliest societies, and in the course of time societies began to be formed in which the following successive developments can be traced:—

(1) Fixity of the period of subscription.

(2) Indefinite duration of the society.

(3) Interest chargeable on the amount outstanding at a defined rate.

Undoubted though these improvements were, they eventually resulted in the evolution of a type of society in which members could definitely be classed either as investors or customers from the moment when they joined. Customers became "advanced members," and the mortgage recited that they had taken up advanced shares of a nominal value equivalent to the advance. In societies which did not allow profits to advanced members these "shares" served no more useful purpose than the vermiform appendix in the human body.

It was decided before the passing of the Building Societies Act, 1894, in the case of *Brownlie* v. *Russell* (1883) that capital payments in respect of advanced shares *pro tanto* extinguished the advance, and under sect. 10 of the Act of 1894 in the event of a dissolution or winding up the advanced member cannot be compelled to pay off his mortgage *en bloc* if under the rules of the society he is entitled to repay it by periodical instalments. This meant that, even before the passing of that Act, an advanced member need have no stake in the society but might be a borrower pure and simple. Many societies of this type existed when the Building Societies Act, 1874, was passed, but there were also a great many societies in existence where the principle of mutuality was still observed. Even allowing, however, for the change in the practice of societies in 1874, at least no one seriously contemplated:—

(*a*) That societies would make advances except on terms of making regular repayments of principal; or

(*b*) That advances would be made except with the object of enabling individual private residents or other small property occupiers to acquire unencumbered premises; or

(*c*) That advances would be made that could not be justified on the real or leasehold security offered alone; or

(*d*) That such vast concerns as the larger permanent building societies of to-day would develop from the building society movement.

To-day there are really only four fundamental distinguishing features of an incorporated building society, viz,

(1) There is no fixed capital (*Liquidator of Irvine, &c.*, v. *Cuthbertson* (1905)).

(2) Shares are withdrawable (Building Societies Act, 1894, sect. 1).

(3) The liability of investing members is limited to the amount paid or in arrear on shares (Building Societies Act, 1874, sect. 14).

(4) Borrowing powers are limited (Building Societies Act, 1874, sect. 15; Building Societies Act, 1894, sects. 14 and 15).

To summarise the position, the fund from which advances are made is a floating fund subscribed mainly by persons who on a dissolution or winding up are postponed to creditors. Even members whose notices of withdrawal have expired, while preferred to other members, are postponed to ordinary creditors (*Walton* v. *Edge* (1884)).

There are a number of societies now in existence in which the amount of the advance bears no relation to shareholding and the condition of membership is satisfied by the taking up of an investing share of a nominal amount. There is in point of fact no reason why a "member" should hold a share at all. There is nothing in the Building Societies Acts which defines the meaning of the word "member." Any person who for adequate consideration agrees to become a member is, under sect. 21 of the Building Societies Act, 1874, bound by all rules and alterations of rules, and is liable to fines and other payments prescribed therein, and if the mortgage deed sufficiently incorporates the rules the advanced member has such payments charged on the mortgaged property (*Rosenburg* v. *Northumberland Building Society* (1889); *Bradbury* v. *Wild* (1893)).

The advanced member's liability is sufficiently defined in the event of winding up or dissolution by the Building Societies Act, 1894, sect. 10, and it is necessary to refer to sect. 14 of the Building Societies Act, 1874, only in the case of members holding unadvanced shares. It is quite clear that the holding of an advanced share does not alter the member's position except for the purpose of ascertaining and allowing for profits and losses if such is provided in the rules—a comparatively rare occurrence. The next logical step after the realisation that an advanced share is a superfluity is to depart from the principle of regular repayments of capital, and this has been done in a number of cases to a lesser or greater degree.

It is clearly possible for the rules not to entitle the member to repay by regular instalments and to enable the society to call in a mortgage at any time. The rules may equally not place any obligation on the member to repay by such instalments or may in a number of ways allow adjustments of the rate of payment. Such elasticity is entirely unobjectionable, and in fact desirable from the practical point of view, so long as the society is permanent and has established itself in a sufficiently strong financial position. A society's borrowing powers are limited to two-thirds of the amount for the time being secured to the society by mortgages of its members, excluding the amount secured on properties the payments in respect of which were upwards of twelve months in arrear at the date of the last preceding annual account and statement, and the amount secured on properties of which the society has been upwards of twelve months in possession as at the date of such account and statement (Building Societies Act, 1874, sect. 15; Building Societies Act, 1894, sect. 14). In practice the larger societies do not borrow anything approaching this amount, have considerable surplus funds, and are often as well pleased to have money remain out on mortgage as to make fresh advances. The practical importance, therefore, of scheduling properties of the type excluded from the computation of borrowing powers in the annual account and statement under the Building Societies Act, 1894, sect. 2, is in such cases negligible. Further, it does not then matter very much whether capital repayments are made or not so long as interest is not lost, and the society can really afford to risk making advances on more speculative securities than are strictly permissible under the Building Societies Act, 1874, sect. 13.

Where there is no legal obligation at a particular time for the member to make a repayment it is hardly possible to say that his repayments are "in arrear." If, therefore, a member either with the approval of the directors or otherwise, in accordance with the rules, is not obliged to make any repayment or to make the same repayment as was originally contemplated, the society cannot be compelled to schedule the property in the annual account and statement under the Building Societies Act, 1894, sect. 2. Since, moreover, it is in the directors' discretion in most cases whether repayments are to be

varied, it is practically in the discretion of the directors whether the property shall be scheduled. The same result may be obtained by advancing in respect of new advanced shares a sufficient amount to pay off the old mortgage (arrears included), and in effect put the member still further back in his repayments, or, in other words, by making a fresh advance. As to properties in possession, there are, as is well known, many ways of avoiding the scheduling of these, *e.g.*, by appointing a receiver who is deemed to be the agent of the borrower, although losses which may be sustained in the realisation of a security cannot be concealed in an account and statement without committing an offence under the Building Societies Act, 1894, sect. 22.

According to the rule in *Re Sheffield and South Yorkshire Permanent Building Society* v. *Aizelwood* (1889), the propriety of an advance must be tested as though no such ingredient as the question of collateral security entered into it, but, subject to this, the directors may make advances on speculative securities which would not be open to trustees. This decision has not prevented the widespread practice of making advances up to 90 per cent. of the valuation of the property backed by builders' deposits, or by guarantees either under the Housing Act, 1925, sect. 92 (1) (*b*) or otherwise, or by a policy in an insurance company indemnifying the society against loss in respect of any advance made in excess of that justifiable on the security of the real or leasehold estate alone, the premium on the policy at the rate of 10 per cent. of such excess being payable out of the advance.

The three types of collateral security have been given in ascending order of practical propriety, and the last, so long as the insurance company is sound, cannot seriously be objected to. In any event, the possibility of directors being rendered liable to the society for losses sustained through an *ultra vires* advance is so small as to be habitually ignored. Although they may be liable for applying moneys to a purpose which the society has no power to sanction as for a breach of trust (*In re Sharp* (1892)), the rules of the society, which are binding on members, may make it a term of the employment of directors that "they shall not be answerable for the insufficiency or deficiency of value or otherwise of any security whatsoever unless the loss arising by any such means happen through their own wilful neglect of default." It is probably generally thought that such a rule, though not altering the fact that a breach of trust has been committed, might in practice prevent directors from being made liable for it. A rule in the terms mentioned is not at all unusual, and there is very little point in it unless it was intended to cover *ultra vires* cases.

The prospect of a loss being sustained on an advance conforming strictly to the rule in *Re Sheffield and South Yorkshire* case above referred to is very remote indeed and could arise only through some entirely unforeseen deterioration in property values.

A Bill has been introduced by the Minister of Finance in the Union of South Africa which, *inter alia*, would, if passed in its original form, definitely authorise building societies there to make advances on a far wider range of security than that permitted to building societies in this country, and this may possibly be regarded as "the writing on the wall." It is indeed abundantly clear that the modern incorporated building society is increasingly difficult to distinguish from a mortgage investment company if the superficial nature of its transactions is disregarded in favour of essentials. There is no very great practical distinction between investing members and depositors. One receives profits usually at a uniform rate and the other receives interest at a defined rate. Shareholders usually under the rules of the society, and depositors invariably by statute, may be required to give notice before withdrawal (Building Societies Act, 1894, sects. 1 and 15), and the only real distinction is that shareholders are postponed on winding up or dissolution to creditors, whereas depositors are creditors pure and simple. Even this does not arise unless the society is insolvent. Furthermore many societies in the North of England prefer to issue preferential shares in lieu of receiving deposits.

It is quite possible for a company under the Companies Act, 1929, to do substantially the same class of business as a modern permanent building society, and in fact there are such companies in existence. In such companies when fully under way, as in the case of assurance companies, a large share capital is not necessary for running the concern, the profits of which may for the purposes of eliminating competition be mainly devoted to payment of a high rate of interest on loans by way of deposit, and such a company has none of the restrictions with regard to the taking or withdrawal of deposits imposed on an incorporated building society under sect. 15 of the Building Societies Act, 1874, and sect. 15 of the Building Societies Act, 1894. It may simply carry on the business of banking. It has had the advantage of statutory receipts in discharging mortgages since the Law of Property Act, 1925 (under sect. 115 of that Act), but it does not have

the exemption from stamp duties afforded to incorporated building societies under that section or under sect. 41 of the Building Societies Act, 1874.

Other societies which are in essence building societies, are registered under the Industrial and Provident Societies Acts, 1893 to 1928. These societies have the privilege of withdrawable share capital unless they carry on the business of banking, which, under sect. 19 of the Industrial and Provident Societies Act, 1893, does not include the taking of deposits of more than 10s. in any one payment or more than £20 for any one depositor, payable at not less than two clear days' notice. No one member other than another society registered under the same Acts may hold more than £200 worth of shares (Industrial and Provident Societies Act, 1893, sect. 4). A society which conforms to these conditions has privileges, not exactly on all fours with, but substantially equivalent to the privileges of an incorporated building society. Ignoring minor privileges, it has, for example, exemption from stamp duty in respect of statutory receipts. It does not have the same exemption from stamp duties in other cases, but it has had the additional exemption from assessment under Schedules C and D for Income Tax. The average individual shareholding in incorporated building societies is about £217, but it is generally conceded that the limit of £200 for industrial and provident societies, which it exceeds, is too low.

It is perfectly true that there are some features in the Building Societies Acts that are peculiarly applicable to building societies, but the modern type of building society has outgrown the provisions of those Acts, and it is hard to see logically why it should continue to enjoy privileges not enjoyed by companies except through registration under, and under the conditions prescribed by, the Industrial and Provident Societies Acts. Probably the best justification for the continued enjoyment by incorporated building societies of their present privileges and status is the practical one that any violent change would cause too great an upheaval. Further, it would be difficult to draw any hard and fast line between building societies which have become different from, and those which are indistinguishable from those in existence when the Building Societies Acts were passed. It is easy to advocate a simplification of the law, but it is much easier to promote legislation which still further complicates the existing labyrinth of company and society law, and this is presumably what we have to look forward to in the not far distant future.

# THE BUDGET.

## CHANCELLOR'S SPEECH.

The following is the text of Mr. Chamberlain's speech in introducing the Budget in so far as it relates to matters which are of more particular interest to the Accountancy profession :—

### THE DEFICIT.

I can summarise the Budget deficit as follows. We have a net shortage of revenue of £22,000,000, an increased expenditure of £11,000,000, and a payment to the United States of £29,000,000, adding up to £62,000,000. From that we can deduct savings in interest on Debt and reduction in the Sinking Fund to £17,250,000, making together in round figures £29,000,000, leaving a net deficit of £33,000,000, or, making allowance for the estimated Budget surplus of £800,000, a Budget deficit of £32,200,000.

### WAR DEBTS AND REPARATIONS.

Now I come to 1933. I must begin, as I did last year, with a word or two about debts and reparations. In this year, 1933-34, we should, under the agreements with the United States Government of June 18th, 1923, and June 4th, 1932, be liable to make payments amounting to $193,500,000, equivalent at the rate of exchange which was current on Saturday last to £51,000,000 sterling. Against this we should receive in Reparations £32,500,000, in Allied War Debts £19,500,000, in Dominion War Debts, relief debts, etc., £12,500,000, making a total of £64,500,000. It must be obvious that none of these figures, whether representing assets or liabilities, can be said yet to be in a fixed or final form, and therefore I propose this year to adopt the same procedure as I did last year, and make no provision either for payments to America or for receipts from other countries to ourselves.

### INLAND REVENUE.

I come now to Inland Revenue. I put Inland Revenue on the existing basis of taxation at a total of £390,000,000, made up as follows :—Income tax, £240,000,000 ; surtax, £51,000,000 ; death duties, £75,000,000 ; stamps, £21,000,000 ; and Land Tax and arrears of Excess Profits Duty and Corporation Profits Tax, £3,000,000. In putting the income tax at £240,000,000 I am estimating that I shall receive less than I did last year by no less than £11,500,000. Unfortunately the returns with which traders are good enough to furnish me show that the profits of 1932, on which the assessments will be made, were considerably less than they were the year before, and, in addition to that, we have also to take into account the effect of the loss of tax brought about by the Conversion, which means a smaller amount of interest.

I call the figure of £51,000,000 which I have estimated for surtax depressingly low. Hon. members no doubt are aware that the collection of surtax lags a year behind that of income tax. It is levied for this next year upon the statutory income of 1932,

and that means that, generally speaking, it represents interest and dividends of 1932, and profits and salaries of 1931. I must therefore anticipate a further shrinkage below the receipts of last year, which themselves were £5,000,000 less than I estimated and £16,000,000 below the previous year's figure. In putting death duties at £75,000,000 I have taken account of the fact that we may expect a higher value for securities, but against that I have to set the fact that last year's receipts contained an element of windfalls. Stamps at £21,000,000 mean that I have put the increase over last year at the same amount as the increase of last year over the year before. The remaining items give me a revenue of £41,730,000. Motor vehicle duties I estimate to be unchanged at £5,000,000; Crown Lands revenue a trifle changed at £1,230,000; sundry loans and miscellaneous revenue are slightly better at £3,800,000 and £20,000,000 respectively; and the Post Office receipts are unchanged at £11,700,000. That figure for the Post Office exceeds the actual receipts for 1932 by £800,000, but that is accounted for because we expect extra revenue from telephones and wireless.

I might take this opportunity of making an allusion to the report of the Bridgeman Committee. It has already been announced that the Government have accepted in principle the recommendations of that Committee, and the Finance Bill will give effect to that decision in such a way that the first payment will be made to the Post Office fund in 1934. The Bridgeman formula has been simplified, but we expect that the financial effect will in the long run be unaltered, so that I must expect my Budget receipts in 1934 to be about £10,750,000, provided, of course, that other things remain the same. Adding those items together we get a total estimated revenue on the existing basis for the 1933-34 period of £712,730,000.

### The Exchange Equalisation Account.

Now I turn to another matter. One of the principal features of the last Budget was the establishment of the Exchange Equalisation Account. It was a new departure, which was very generally approved, although I think a certain amount of alarm was expressed lest very heavy losses should be incurred on the working of the account. I am happy to say that those fears have proved to be unjustified. (Cheers.) I think I am entitled to claim to-day that the Exchange Equalisation Account has stood the test of experience, and that during the past year, in spite of some rather severe financial storms and a great deal of surging to and fro of the waves of capital, the exchange rate has remained comparatively steady. I believe that both traders in this country and Governments in other countries whose currencies are either linked to sterling or closely follow it appreciate that the Exchange Equalisation Account has played an important part in maintaining that stability. One sometimes hears the view expressed that it would be better to leave sterling to follow what is called its natural course, but the value of a currency which was not anchored to the gold standard and was left to follow a natural course would display very wide fluctuations. That is partly due to seasonal causes.

The pound sterling is habitually strong in the spring and weak in the autumn, a circumstance which produces perfectly unnecessary exchange fluctuations. Those fluctuations are also brought about by capital movements. It is only in periods when the inflow and the outflow of our short-term capital balances with the exchanges that they can be even approximately stable. If you take trade transactions in this country alone they might give rise to exchange transactions of perhaps £1,000,000 a day or even occasionally as much as £2,000,000. But the total exchange dealings are much greater, and we had actual experience last year of foreign capital going out of this country or coming into it up to a level as high as £8,000,000 a day or even more. If the exchange were left to follow what is described as its natural course on such occasions as that I am quite sure that there would be an irresistible cry from the traders that it was impossible for them to conduct any business at all in such circumstances. Speaking then with a greater experience of the working of this fund than I had last year, I say without hesitation that it has proved its value. It has smoothed out the day to day and hour to hour fluctuations for the benefit of everybody concerned. It never aspired to do anything more. It is quite certain that even if we had attempted to alter the long-term trend of the exchange we should not succeed. That—with the clear evidence of the balance of trade still against us in this country—is my answer to the critics who were disposed to suggest that the account has been used to secure the under-valuation of sterling.

During the last few months we found ourselves in the presence of a new phenomenon distinct from seasonal fluctuations or movement of capital, yet this new phenomenon has in no way related to the permanent value of sterling. It has taken the form of a removal of funds from many other countries into this country because it was considered to be the safest place of deposit. Money which comes here under these conditions is obviously bad money because at any time it may, and sometimes and probably at the most inconvenient moment, will take flight back again whence it came. During these last few months money of this character has been coming here in quite unexpected quantities. Although on the whole we have succeeded in preventing any violent fluctuations in the exchange, the resources of the fund have at times been severely strained. I have given a good deal of consideration to the position which has thus been created. Every country has its own problems to face and has to solve them in its own way. In our case since 1925 we have worked with an extraordinarily small gold reserve notwithstanding the large deposits here of short-term foreign money. In comparison with other great financial countries we made but a small demand on the world's stock of gold. But our self-abnegation has exposed us to serious anxieties. Some time ago I decided that it would be necessary to make an addition to the reserve

of the Exchange Equalisation Account, and at a later stage I propose to ask the Committee to pass a resolution for that purpose.

### AMERICA AND GOLD STANDARD.

Before I leave the subject I must say one word about the action recently taken by the United States Government in restoring the embargo on the export of gold. From what I have just said, the Committee will realise that there is no connection whatever between the American action and the increase in the Exchange Equalisation Fund, which was decided upon long before we had any conception that the American Government might go off the gold standard. We recognised from the first that the President's action was in no sense directed to any relations or conversations with other countries, but was prompted by purely internal considerations. We are happy to think that our desire for international co-operation is shared in the United States, and, while we cannot disguise from ourselves that the situation as it has developed in recent days has involved some anxieties and requires the closest and most careful consideration, we shall await with the friendliest interest the future measures the President has no doubt in mind and which we earnestly hope will promote the establishment of a renewed confidence.

I am going to ask the Committee to give their attention to certain changes of taxation which are not of sufficient importance financially to make any marked effect upon our national accounts. The first one is designed to assist in the expansion of industry. There is in existence what is known as the companies' capital duties—a duty upon the raising of new capital at the rate of £1 per cent. That seems to be a very high charge in times like this, and I propose to reduce it to 10s. (Hear, hear.) Ordinarily a relief from stamp duty takes effect only from the passing of the Finance Bill, but in this case I am proposing that the relief shall take effect from to-morrow, and the Finance Bill will provide accordingly. The cost in a normal year would be about £1,500,000, but in view of the low level of the stamp duties I think that it is sufficient to estimate for a loss of £600,000 in the present year.

I have already called attention to the great savings which have been made in consequence of the conversion operations and of their reaction upon the yield of income tax. Now I think that also involves a reconsideration of the interest rates on the death duties and on the arrears of excess profits duty. The rate on the death duties was raised in 1919 from 3 per cent. to 4 per cent. without reduction of tax, and the rate on arrears of excess profits duty is at the present time 4½ per cent. Obviously I think that those rates are too high to-day, and accordingly I propose from to-morrow to reduce both of them to 3 per cent. without deduction of tax. I have put the cost of the first reduction at £250,000 this year, and the cost of the other reduction is only trifling and has been allowed for in my estimate of the year. The next item I want to mention concerns the flat-rate allowance for repairs under Schedule A. The present rate, introduced in 1923, was to last for five years. In 1928 it was extended for another five years to 1933, and I now propose to prolong it for a further three years to bring us up to April, 1936.

### CO-OPERATIVE SOCIETIES.

Now I come to the vexed question of the liability of co-operative societies to income-tax. In my speech last year I stated that the Government's desire was to see an end put to a very long-drawn-out controversy, and we hoped that the appointment of a Committee to investigate the whole affair might lead to something in the nature of a final settlement. That Committee have reported. They rejected the view that was put forward in some quarters that the dividends or "divis" should be taxable and reported that they should be treated as a trade expense similarly as discount to ordinary traders, but they expressed their agreement with the majority of the Royal Commission which reported in 1920 that the so-called mutual trading gains, arising from trading with members, should be made chargeable to income tax. The effect of their report was broadly that the undistributed income of the societies should be taxed at the full rate while the distributive income should be taxed in the hands of the recipients. They estimated that, as a result of those recommendations, if they were put into operation, there would be an increased revenue of £1,200,000 in a full year.

After the report had been presented I saw the representatives of the co-operative societies and I saw representatives of traders too. The deputation which came to see me I found were very strongly opposed to that recommendation of the Committee which dealt with what is known as the principle of mutuality. They told me that they regarded this principle as one which might be considered sacrosanct and they said that if the recommendations of the Committee on that point were carried into effect it would be regarded by their members as a penal measure directed against their movement.

After consideration of these observations, as the Government were still anxious to obtain a final settlement of this matter, I met the representatives of the co-operative movement again, in order that I might see whether it was practicable to arrive at some solution which would so far as possible meet their views on the subject of mutual trading and at the same time substantially remove the grievances of traders—(cheers)—who object to the special position which the co-operative societies enjoy under the Income Tax Act. At the meeting which I held we did not find it possible there and then to arrive at any such solution.

### DISCUSSIONS CONTINUING.

The discussions are still proceeding, and I am still hoping that it may be possible for us to reach an agreement before the introduction of the Finance Bill. At the same time, I want to make it clear that in the opinion of the Government the matter cannot be allowed to rest where it is. (Cheers.) Some provision will have to be inserted in the Finance Bill, and in due course I shall ask the Committee

to pass a resolution which will enable us to put into the Finance Bill such provisions as may ultimately be found expedient. In the meantime, in order not to prejudice the possibility of our arriving at a satisfactory settlement, I am not proposing to table a resolution to-day. (Hear, hear.)

Sir B. PETO (Barnstaple): Can the right hon. gentleman tell us if there is any precedent for discussing with the taxpayer whether he ought or ought not to be taxed? (Cheers.)

Mr. CHAMBERLAIN: I do not think we need any precedent for an action of this kind. I cannot help thinking that the whole House would be glad if we could come to a settlement on a matter which in the past has created bitter feeling on both sides, and which is really a dispute over a matter which ought to be finally settled once and for all. For my purpose, of course, it is necessary that I should insert some figure in my Estimates, and accordingly I have set down a sum of revenue of £750,000 for this year—(cheers)—but I would ask the Committee to regard that sum as purely provisional pending the final proposals of the Government.

## Income Tax.

There has been a considerable amount of agitation—I might almost call it a drive—in favour of deliberately unbalancing the Budget in order to take a substantial slice off the income tax. That proposal has been supported by eminent economists, powerful journalists, and, if my information is correct, by some hon. members of this House. But not to keep the Committee in suspense I say at once that I am not prepared to take that course. At the same time a proposal to reduce taxation is so attractive, especially when people are told by persons speaking as having authority that so far from this being the broad road that leadeth to destruction, it is actually the straight and narrow path that leadeth to salvation, I think I ought to give the Committee some of the reasons which have led me to a decision that the proposal cannot be entertained. I can assure the Committee that I am not dismissing this idea merely because it is unorthodox. On the other hand, I am not impressed by the suggestion that its acceptance would be a proof of courage on my part. Courage does not always lie in taking the easiest and most popular course. In any case I am not concerned with the effect of any action that I may take upon my own reputation. As long as I hold my present office my duty is to do what seems to me best in the interests of the country, and it is from that point of view alone that I considered this question. (Hear, hear.)

Let us see, then, what are the arguments for and against this proposal to reduce direct taxation by unbalancing the Budget. There are many variants of the suggestion, but I think there is a general argument underlying them all, which I might put something like this—that the time has now come when trade recovery is on the point of materialising and that a reduction of direct taxation would give such a psychological fillip to the country that the wheels of industry would start running again at such a rate that in a comparatively short time, say, in three years, we might expect to find ourselves in possession of a substantial surplus of revenue. That programme is to be combined with a programme of public expenditure, and this combined programme is to be announced beforehand so that the public may be directed to pay attention only to what is to happen at the end of the period and to disregard the question of whether at any intermediate stage there is a surplus or a deficit. My first comment on that idea is that it seems a highly optimistic one. Supposing that I were to take 1s. off the income tax this year. That would cost £50,000,000. Then, according to the plan, I am to expect in 1934 that I shall draw somewhere about level, and that in 1935 I shall have a surplus of not less than £50,000,000, so that over the whole three years the Budget is to balance. That means that an extra £50,000,000 has to materialise in 1934 and an extra £100,000,000 in 1935.

If those results are to be produced out of income tax alone, as some people suppose, it would mean that the profits of 1933, this present year, would have to increase by £250,000,000 and the profits of next year would have to increase by £500,000,000. Of course, these vast figures are purely academic. We all know that any general increase of prosperity would affect the Budget in many ways. I dare say most of them would be favourable. But I put it to the Committee that at least these figures show the necessity of caution in accepting too readily the anticipations which are so hopefully attached to the idea of a three-year Budget. (Hear, hear.) As a matter of fact, however, every one knows that you cannot possibly in these times forecast what is to happen over three years. Even one year may produce quite unexpected results, as the Committee has seen in the review I have given of the year that is past. If I were to pretend that I could lay out a programme under which what I borrowed this year would be met by a surplus at the end of three years, every one would very soon perceive that I was only resorting to the rather transparent device of making an unbalanced Budget look respectable.

I am not disposed to deny that the reduction of direct taxation might produce a real psychological effect in stimulating business and encouraging the spirits of the country, provided it was covered by a surplus of revenue over expenditure. But I very much doubt whether it would produce that effect if there were no such surplus, and if the public realised, as they certainly would do, that what was spent to-day had presently to be paid for. I must, moreover, ask this question—What would happen supposing that the reaction to the reduction of direct taxation did not actually materialise as is so confidently expected? Do not let us forget that we are not immune, that we cannot be immune, from those grim forces that hold the world in their grip. With world trade shrinking, with prices falling,

can we really persuade ourselves that by unbalancing our Budget we are going to reverse these world movements, and that so rapidly that confidence would not wilt and falter while we were waiting for the upward turn? Suppose that we did unbalance our Budget for the purpose of reducing income tax, can we assure ourselves that, however earnestly we told the country that we were only doing it really to help the unemployed, we should be able to resist the demand which would assuredly arise for an extension of the process? If that were so, should we not very rapidly get back to the very position that this Government was returned to relieve, when uncertainty and apprehension about the future would quickly smother all the hopes and expectations that have been aroused by our original action? (Hear, hear.)

No Finance Minister, as far as I know, ever deliberately unbalances his Budget when he possesses the means of balancing it. Certainly my right hon. friend the member for Hillhead (Sir R. Horne) did nothing of the kind in 1922 when in his Budget speech he proposed to suspend the Sinking Fund. On the contrary he said then that the taxpayer must find the revenue to meet the expenditure. He did right. No Finance Minister would willingly abandon the primary bulwark against extravagance, or forget that an unbalanced Budget may presently have to be balanced again.

But although no Finance Minister voluntarily unbalances his Budget, sometimes external circumstances perform that task for him. Look round the world to-day and you see that badly unbalanced Budgets are the rule rather than the exception. (Hear, hear.) Everywhere there appear Budget deficits piling up, yet they do not produce those favourable results which it is claimed would happen to us. On the contrary, I find that Budget deficits, repeated year after year, may be accompanied by deepening depression and by constantly falling price levels. Before we embark upon so dangerous a course as that, let us reflect upon this indisputable fact, that of all the countries passing through these difficult times, the one that has stood the test with the greatest measure of success is the United Kingdom. (Hear, hear.) Without underrating the hardships of the unemployed, the grievous burden of taxation, the arduous and painful struggle of those engaged in trade and industry, at any rate we are free from that fear which besets so many who are less fortunately placed, the fear that things are going to get worse.

We owe our freedom from that fear largely to the fact that we have balanced our Budgets. By following a sound financial policy we have been enabled to secure low interest rates for industry. It would be the height of folly to throw away that advantage. If we were to reverse our policy just at the very moment when other Governments are striving to follow our example to balance their Budgets, after experience of the policy which we are now asked to adopt, we should stultify ourselves in the eyes of the world and forfeit in a moment the respect with which we are regarded to-day. (Hear, hear.)

In my opinion the pessimism about our financial prospects which lies at the back of all these proposals has no justification in fact. The decline in the yield in taxes reflects the decline in the national income, and that again is intimately associated with the fall in prices, and the fall in world prices affects the capacity of our customers to buy from us, and the fall in sterling prices. Although it is impossible to say whether this long-drawn-out fall in world prices has yet come to an end, at any rate sterling prices, which are so much more important to us, have remained substantially steady over the last eighteen months. We may say that the trading profits fell last year, but it is not true to say that the decline is progressive. On the contrary, the fall last year was only half what it was in each of the preceding years. The difficulties from which we are suffering to-day are due, as I have said, to the aftermath of the events of 1931. It is a remarkable fact that last year's collection of income-tax at the current year's charge actually slightly exceeded the Inland Revenue estimate. The failure of the total yield to reach the figure which I had anticipated was due, as I have said, to a reduction in the collection of arrears and to some increase in repayments.

I do not accept the position, then, that financially we are in peril if we continue to be guided by sound and well-tried principles of policy. Against the fall in revenue and the continued burden of unemployment we must set the great reduction in the interest charge and, with a real improvement in trade and employment, comes the possibility of a reduction in the rates of taxation.

For the reasons, among others, which I have given, it is not possible for me to reduce the rate of income tax, but I would ask the Committee to believe that I have not been insensible to the plea which has been put forward that something should be done to revive the flagging spirits of the nation, and that the extraordinary efforts made by the taxpayer last year deserve some recognition. I do recognise that, when the taxpayer at the beginning of 1932 was faced not only with a rise in the rate of his tax but also with the requirement that in January he should pay three-quarters instead of half, and that, in the four quarters of the year he would be called upon to find five quarters' tax under Schedules B, D, and E, the task was so heavy that nothing but a strong sense of duty to the country could have enabled him to carry it through. I particularly sympathise with those living on comparatively small incomes, to whom this payment of three-quarters in one lump in January comes at a particularly difficult time.

Looking over these things, I reflected that, if only it had been possible for me to reverse the procedure of 1931 and to revert to the old half-yearly system, so that the taxpayer under these three Schedules would only have to pay half the tax instead of three-quarters in January next, it would have afforded him a much-wanted relief and it would, moreover, have released a substantial sum which by its circulation might have done something to stimulate and encourage trade and industry. I went so far as to make some investigation as to the cost of a plan of that kind. I found to my dismay that it would involve a loss of revenue of £12,000,000. It was true that it would not be a genuine loss, but would only be postponement of revenue; but then, as I have told the Committee, I have at my disposal only this meagre sum of £3,250,000. In those circumstances I recalled the old Biblical story of how Abraham, in need of a sacrifice to save the life of his son Isaac, looked round, and behold there was a ram caught by the horns in a thicket. I looked round—(laughter)—and I found the ovine sacrifice that I required.

There was attached to the Five per Cent. War Loan a Depreciation Fund, which, under the prospectus of the Three-and-a-Half per Cent. Conversion Loan, is no longer required. The amount of it is £10,000,000. I propose to transfer that non-recurring asset to meet a non-recurring loss of revenue, and thus, without transgressing any of the canons of sound finance, I am able to restore the half-yearly system of payment under the three Schedules I have mentioned—(cheers)—the taxpayer paying one-quarter of the tax in July but only half in January, and thus receiving relief from one-quarter of the tax for the year. This benefit will enure to 2,750,000 taxpayers' and will come at a time of year when I think it will be most welcome.

I am now able to strike my final balance. The estimated revenue, taking into account the changes I have mentioned and adding the Depreciation Fund, is £698,777,000, and the estimated expenditure is £697,486,000, leaving me with a surplus of £1,291,000.

I have now only to thank the Committee for the patience with which they have listened to me. If I have not produced a startling or a spectacular Budget, it is at least an honest one—(cheers)—in which no attempt has been made to present things other than as they really are. Within the limits imposed upon me by times as difficult as any Chancellor of our day has had to meet—(cheers)—I have sought to have regard to the future as well as to the present, and my proposals will bring some measure of relief, which, I believe, will be felt beyond the circle of those immediately affected.

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We deeply regret to learn of the sudden death of Mr. Justice McCardie on April 26th. The Hon. Sir Henry A. McCardie had been a Judge of the King's Bench Division of the High Court of Justice since October, 1916, and was both liked and respected.

# FRIENDLY SOCIETIES REPORT.

The following is an extract from the annual report of the Chief Registrar of Friendly Societies for the year 1931 :—

## Annual Returns.

(A) EMPLOYMENT OF QUALIFIED AUDITORS.

In the Ancient Order of Foresters a system of "panel auditors" is in operation. It is no doubt an improvement on a system of audits conducted solely by members of the Courts concerned, but that further improvement is desirable is suggested by the experience of Court Good Intent, 2349 A.O.F., which has suffered a loss of £2,225 by the defalcations of its former secretary, although during the entire period of three years covered by the defalcations the accounts were audited by a panel auditor.

An account of the proceedings instituted will appear in Part I of the Report of the Chief Registrar for 1932, but it may be mentioned here that during the proceedings the Magistrates expressed the view that the case had arisen from the undesirable employment of unqualified auditors. As a result of the proceedings, with a single exception, all the Courts in the district now employ public auditors.

The United Ancient Order of Druids at the Biennial Conference in 1931 agreed to adopt a system under which each district is required to appoint a panel of competent auditors to act with the lodge auditors in the audit of the books and accounts of each lodge. This proposal was described as being the only alternative to the accounts being audited by professional auditors as recommended by the Registrar.

The Registrar is more than ever convinced of the desirability of employing qualified auditors to audit the accounts and returns of friendly societies. A large number of the returns, as submitted, are obviously incorrect, and an immense amount of trouble is involved in dealing with errors which could not have occurred had the accounts been submitted to a public auditor.

The Registrar is informed that the executive committee of the National Independent Order of Oddfellows Friendly Society has recommended all lodges of the order to have their accounts audited by public auditors.

The Independent Order of Oddfellows, Manchester Unity, decided at the Annual Conference in 1931 that in future the audit of the Unity accounts should be conducted by a firm of Chartered or Incorporated Accountants instead of by three members of the Society chosen at Annual Conferences.

An amendment of rules was registered during 1931 by the Godalming District of the Independent Order of Oddfellows, Manchester Unity, under which a public auditor is to be elected to audit the accounts of the district and of each lodge in the district.

(B) ERRORS DISCOVERED BY QUALIFIED AUDITORS.

In the following cases returns audited by lay auditors were found to be seriously wrong when the accounts came to be investigated by qualified auditors :—

*(a) Incorrect Treatment of Interest Earned.*

The annual return for 1928 of the Aberdare District, Ancient Order of Foresters, was unsatisfactory in respect of the treatment of interest due to and from the Courts and in various other matters and was sent back for correction. After two attempts had been made to correct it, the return was no more satisfactory than it was at first. In sending it back for the third time the Registrar suggested that the services of a professional accountant should be obtained. This suggestion was adopted and

eventually the accounts were investigated back to 1919 by a public auditor. As a result of this investigation the balance of the District Funeral Fund was reduced by £642 12s. 1d.

*(b) No Balances Brought Forward; Inconsistencies in Accounts.*

The annual return for 1930 of the Prospect Working Men's Club and Institute (Reg. No. 5641 Yorks, W.) which was signed by two lay auditors, was found to be grossly incorrect. No balances were brought forward from the previous year, additions were incorrect, and the balance of profit at the end of the year as shown in the balance sheet was not substantiated by the other accounts. The return was sent back as being incorrect in many respects and the club was advised to employ a public auditor. Inquiries from the Registrar elicited the information that the return had been handed to one of the lay auditors, a book-keeper, who was endeavouring to obtain further fees for making the necessary corrections, although he had already received as much as the full fee of a public auditor. Eventually the auditor was paid a further fee by the club and the return was again submitted to the Registrar, but it was in a worse state than before, as a large balance of loss at the beginning of the year was brought in but was not accounted for either out of profits made during the year or as carried forward at the end of the year. Accordingly, fresh forms were sent to the secretary, who was informed that unless a proper return was received within a specified time, proceedings would be taken against the society and its officers. As it appeared from the correspondence that the auditor was the person principally responsible both for the continued delay and for the incorrect accounts, he was informed as to the statements made by the secretary as to the cause of delay and the fees charged, and further that the return as rendered appeared to be false and insufficient and was asked whether he desired to make any observations. Within a very short space of time a proper return, signed by an accountant, was furnished which showed that the amount owing at the end of the year for refreshments, tobacco, and other bar stocks was no less that £578 8s. 6d., as against £48 13s. 10d. shown in the return originally submitted. The return also showed that so far from having a small balance of profit at the end of the year the club was hopelessly insolvent and that a certain amount of cash was unaccounted for.

The lay auditor, Arthur Sawsby, who had received £4 2s. in fees, offered no explanation of the inaccuracy of his work or of the delay, and proceedings were taken against him at Barnsley Police Court on Monday, April 18th, 1932, for aiding and abetting the club in furnishing a false and insufficient return. Sawsby pleaded not guilty, and during the course of the proceedings said that he had been book-keeping for the last fifty years, during which time he had frequently audited the accounts of local tradesmen and that this was the first occasion on which any trouble had arisen.

The Magistrate, however, fined him the maximum penalty of £5 and ordered him to pay the full costs of the proceedings amounting to £11 8s. The fine was not paid and he was sentenced to two months' imprisonment.

*(c) Cash in Treasurer's Hands Understated.*

The annual return for 1929 of the Vale of the Esk Friendly Society (Reg. No. 4998 Yorks) showed an item of £54 5s. 6d. on the expenditure side of the Management Fund Account described as "To Sick and Funeral Fund," but no corresponding entry appeared in the account of the Sick and Funeral Fund. After several unsuccessful attempts to obtain an explanation the Registrar asked for an investigation to be made by a public auditor. The investigation was made and disclosed the fact that the cash in hands of the treasurer had been understated for several years and at the end of 1930 should have been £54 5s. 6d. more than was shown in the return. The return was amended, and the treasurer stated that he was prepared to accept the public auditor's statement as to the balance of cash in his hands.

(C) AUDITORS' SPECIAL REPORTS.

Upwards of 300 special reports were made by auditors, nearly all relating either to defective systems of book-keeping or to defalcations by officers. As regards working men's clubs, almost all of the reports were made by public auditors or other qualified accountants. It is inconceivable that there were practically no matters calling for special reports in the case of returns audited by lay auditors, which constitute by far the greater proportion of all the returns. The absence of reports in these cases seems to emphasise the desirability of submitting accounts to qualified persons rather than to lay auditors.

## THE COMPANIES ACT.

The Annual Report of the Executive Council of the Association of British Chambers of Commerce for 1932-33 states that at their last Annual Meeting a resolution was unanimously passed urging the Government to re-examine the report of the special Committee on the Companies Act and the representations of the Association and other representative bodies thereon, with a view to the amendment of the Act of 1929 in conformity with present-day experience and requirements. The Executive Council referred this resolution to the Finance and Taxation Committee which recommended the re-appointment of the Association's Committee on Company Law to deal with the matter. A circular letter was sent to all Chambers inviting their views and suggestions as to what amendments were necessary in the law. The opinions of the Chambers were also sought upon the suggestions made for amendments by question in Parliament. The Committee was subsequently constituted and has already held a number of meetings under the chairmanship of Mr. Lakin-Smith, Chairman of the Finance and Taxation Committee. The various suggested amendments were prepared in order for the Committee and were referred by it to four sub-committees as follows :—

*Winding-up.*—Mr. A. Duncan Barber (Chairman).

*Accounts and Audits.*—Mr. Henry Morgan (Chairman).

*Procedure, Meetings and Proxies.*—Sir John Sandeman Allen, M.P. (Chairman).

*Prospectuses and Underwriting.*—Mr. F. Wilcock (Chairman).

These sub-committees have held a number of meetings and have made their recommendations to the main committee which has at present under consideration the various suggestions so reported upon. It is hoped to be able to place before the Board of Trade during the next few months the considered opinions of the Association upon this important question. The Council are much indebted to the various members of the Committee who have given so much time and thought to its work. The report and recommendations of the Association's Committee will be circulated to all Chambers as soon as they are available.

# FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT, 1933.

An Act to make provision for the enforcement in the United Kingdom of judgments given in foreign countries which accord reciprocal treatment to judgments given in the United Kingdom, for facilitating the enforcement in foreign countries of judgments given in the United Kingdom, and for other purposes in connection with the matters aforesaid.

## PART I.

### REGISTRATION OF FOREIGN JUDGMENTS.

*Power to extend Part I of Act to foreign countries giving reciprocal treatment.*

1.—(1) His Majesty, if he is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the superior courts of the United Kingdom, may by Order in Council direct—

(*a*) that this Part of this Act shall extend to that foreign country; and

(*b*) that such courts of that foreign country as are specified in the Order shall be deemed superior courts of that country for the purposes of this Part of this Act.

(2) Any judgment of a superior court of a foreign country to which this Part of this Act extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part of this Act applies, if—

(*a*) it is final and conclusive as between the parties thereto; and

(*b*) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and

(*c*) it is given after the coming into operation of the Order in Council directing that this Part of this Act shall extend to that foreign country.

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(4) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.

*Application for, and effect of, registration of foreign judgment.*

2.—(1) A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply to the High Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:

Provided that a judgment shall not be registered if at the date of the application—

(*a*) it has been wholly satisfied; or

(*b*) it could not be enforced by execution in the country of the original court.

(2) Subject to the provisions of this Act with respect to the setting aside of registration—

(*a*) a registered judgment shall, for the purposes of execution, be of the same force and effect; and

(*b*) proceedings may be taken on a registered judgment; and

(*c*) the sum for which a judgment is registered shall carry interest; and

(*d*) the registering court shall have the same control over the execution of a registered judgment;

as if the judgment had been a judgment originally given in the registering court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as, under this Part of this Act and the Rules of Court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.

(3) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of the United Kingdom, the judgment shall be registered as if it were a judgment for such sum in the currency of the United Kingdom as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

(4) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.

(5) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

*Rules of Court.*

3.—(1) The power to make rules of court under section ninety-nine of the Supreme Court of Judicature (Consolidation) Act, 1925, shall, subject to the provisions of this section, include power to make rules for the following purposes—

(*a*) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments;

(*b*) for prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;

(*c*) for providing for the service on the judgment debtor of notice of the registration of a judgment;

(*d*) for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment

set aside and with respect to the extension of the period so fixed ;

(*e*) for prescribing the method by which any question arising under this Act whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, is to be determined ;

(*f*) for prescribing any matter which under this Part of this Act is to be prescribed.

(2) Rules made for the purposes of this Part of this Act shall be expressed to have, and shall have, effect subject to any such provisions contained in Orders in Council made under section one of this Act as are declared by the said Orders to be necessary for giving effect to agreements made between His Majesty and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of this Part of this Act.

*Cases in which registered judgments must, or may, be set aside.*

4.—(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

(*a*) shall be set aside if the registering court is satisfied—

(i) that the judgment is not a judgment to which this Part of this Act applies or was registered in contravention of the foregoing provisions of this Act ; or

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case ; or

(iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear ; or

(iv) that the judgment was obtained by fraud ; or

(v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court ; or

(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made ;

(*b*) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of sub-section (3) of this section, be deemed to have had jurisdiction—

(*a*) in the case of a judgment given in an action in personam—

(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court ; or

(ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court ; or

(iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court ; or

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court ; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place ;

(*b*) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was moveable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court ;

(*c*) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (*a*) or paragraph (*b*) of this sub-section, if the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in sub-section (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction—

(*a*) if the subject matter of the proceedings was immovable property outside the country of the original court ; or

(*b*) except in the cases mentioned in sub-paragraphs (i) (ii) and (iii) of paragraph (*a*) and in paragraph (*c*) of sub-section (2) of this section, if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court ; or

(*c*) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

*Powers of registering court on application to set aside registration.*

5.—(1) If, on an application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under the last foregoing sub-section, or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to

register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

*Foreign judgments which can be registered not to be enforceable otherwise.*

6.—No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the United Kingdom.

*Power to apply Part I of the Act to British Dominions, Protectorates and Mandated Territories.*

7.—(1) His Majesty may by Order in Council direct that this Part of this Act shall apply to His Majesty's dominions outside the United Kingdom and to judgments obtained in the courts of the said dominions as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in the event of His Majesty so directing, this Act shall have effect accordingly and Part II of the Administration of Justice Act, 1920, shall cease to have effect except in relation to those parts of the said dominions to which it extends at the date of the Order.

(2) If at any time after His Majesty has directed as aforesaid an Order in Council is made under section one of this Act extending Part I of this Act to any part of His Majesty's dominions to which the said Part II extends as aforesaid, the said Part II shall cease to have effect in relation to that part of His Majesty's dominions.

(3) References in this section to His Majesty's dominions outside the United Kingdom shall be construed as including references to any territories which are under His Majesty's protection and to any territories in respect of which a mandate under the League of Nations has been accepted by His Majesty.

## PART II.

### MISCELLANEOUS AND GENERAL.

*General effect of certain foreign judgments.*

8.—(1) Subject to the provisions of this section, a judgment to which Part I of this Act applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in the United Kingdom as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment—

(*a*) where the judgment has been registered and the registration thereof has been set aside on some ground other than—

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or

(*b*) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (*a*) of this subsection.

(3) Nothing in this section shall be taken to prevent any court in the United Kingdom recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Act.

*Power to make foreign judgments unenforceable in United Kingdom if no reciprocity.*

9.—(1) If it appears to His Majesty that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the superior courts of the United Kingdom is substantially less favourable than that accorded by the courts of the United Kingdom to judgments of the superior courts of that country, His Majesty may by Order in Council apply this section to that country.

(2) Except in so far as His Majesty may by Order in Council under this section otherwise direct, no proceedings shall be entertained in any court in the United Kingdom for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

(3) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.

*Issue of certificates of judgments obtained in the United Kingdom.*

10. Where a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in the High Court against any person and the judgment creditor is desirous of enforcing the judgment in a foreign country to which Part I of this Act applies, the court shall, on an application made by the judgment creditor and on payment of such fee as may be fixed for the purposes of this section under section two hundred and thirteen of the Supreme Court of Judicature (Consolidation) Act, 1925, issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action, including the causes of action, and the rate of interest, if any, payable on the sum payable under the judgment, as may be prescribed:

Provided that, where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

*Interpretation.*

11.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

"Appeal" includes any proceeeing by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

"Country of the original court" means the country in which the original court is situated;

"Judgment" means a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

"Judgment creditor" means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment

have become vested by succession or assignment or otherwise;

"Judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original court;

"Judgments given in the superior courts of the United Kingdom" means judgments given in the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, and includes judgments given in any courts on appeals against any judgments so given;

"Original court" in relation to any judgment means the court by which the judgment was given;

"Prescribed" means prescribed by rules of court;

"Registration" means registration under Part I of this Act, and the expressions "register" and "registered" shall be construed accordingly;

"Registering court" in relation to any judgment means the court to which an application to register the judgment is made.

(2) For the purposes of this Act, the expression "action in personam" shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants.

*Application to Scotland.*

12. This Act in its application to Scotland shall have effect subject to the following modifications:—

(*a*) For any reference to the High Court (except in section eleven of this Act) there shall be substituted a reference to the Court of Session:

(*b*) The Court of Session shall, subject to the provisions of sub-section (2) of section three of this Act, have power by Act of Sederunt to make rules for the purposes specified in sub-section (1) of the said section:

(*c*) Registration under Part I of this Act shall be effected by registering in the Books of Council and Session or in such manner as the Court of Session may by Act of Sederunt prescribe:

(*d*) For any reference to section two hundred and thirteen of the Supreme Court of Judicature (Consolidation) Act, 1925, there shall be substituted a reference to the Courts of Law Fees (Scotland) Act, 1895:

(*e*) For any reference to the entering of a judgment there shall be substituted a reference to the signing of the interlocutor embodying the judgment.

*Application to Northern Ireland.*

13. This Act in its application to Northern Ireland shall have effect subject to the following modifications:—

(*a*) References to the High Court shall, unless the context otherwise requires, be construed as references to the High Court in Northern Ireland:

(*b*) For the references to section ninety-nine and section two hundred and thirteen of the Supreme Court of Judicature (Consolidation) Act, 1925, there shall be substituted respectively references to section sixty-one and section eighty-four of the Supreme Court of Judicature Act (Ireland), 1877, as amended by any subsequent enactment.

*Short Title.*

14. This Act may be cited as the Foreign Judgments (Reciprocal Enforcement) Act, 1933.

## CHARTERED INSTITUTE OF SECRETARIES.

### Country Conference.

The Country Conference of the Institute will be held in Oxford on Thursday the 11th, and Friday the 12th of May.

The business meetings will be held in Rhodes House, which has been placed at the disposal of the Institute by the University authority.

On Thursday, May 11th, the Mayor will extend a civic welcome to Oxford in the Town Hall, after which a paper will be read by Mr. Kenneth Bell, M.A., Fellow of Balliol College and Vice-Chairman of the Appointments Committee of the University, entitled "How the Universities can help Commerce."

In the afternoon arrangements have been made for:—

(*a*) Visits to the following colleges: Merton, Christ Church, Corpus Christi, Oriel; or

(*b*) For those not visiting colleges, a motor trip to Woodstock, Chipping Norton, Burford and Eynsham.

In the evening, at 7.30, the Conference dinner will take place at the Clarendon Hotel. This will be preceded at 7 o'clock by a reception, when the President will receive the official and other guests and members.

On Friday, May 12th, there will be a discussion on "Training Leaders for Industry," on which the Rt. Hon. H. A. L. Fisher, M.A., Hon. D.C.L., Warden of New College, will address the gathering. There will be also present some leading University professors and others to explain the extent of the training supplied in the respective "Schools" of the University for those contemplating a commercial, industrial or financial career.

In the afternoon arrangements have been made for:—

(*a*) Visits to the following colleges: Magdalen, New College, University, All Souls, Brasenose, Wadham, and the University Church, St. Mary's; or

(*b*) For those not visiting colleges, a visit has been arranged to the Morris Motor Works at Cowley.

On Thursday and Friday mornings the ladies will be conducted over the famous Bodleian Library (named after its founder, Sir Thomas Bodley, a distinguished scholar and diplomatist in the time of Queen Elizabeth and King James I, who resuscitated the Oxford Library originated in 1320); the Radcliffe Camera adjoining the Bodleian and used as a supplementary reading room; the Divinity School, one of the finest perpendicular buildings in existence and completed about A.D. 1480; and the Ashmolean, provided to house the first public collection of curiosities in England and presented to Oxford in 1682 by Elias Ashmole, and now containing an interesting collection of works of art.

On Saturday, May 13th, there will be an opportunity for those who so desire to visit another group of colleges, viz, Trinity, Balliol, St. John's, and Worcester. In addition there will be an opportunity for visiting the parks where University and other cricket will be in progress.

Those leaving on Saturday morning who desire to proceed to Stratford-on-Avon, 40 miles from Oxford, by road or two hours by train, for the Shakespeare Festival can see "The Merchant of Venice" at 2.30 on Saturday, May 13th, or "Coriolanus," at 8, in the Shakespeare Memorial Theatre at Stratford.

Special travelling facilities have been arranged with the railway authorities.

# Recent Developments in Mercantile Law.

A LECTURE delivered before the Incorporated Accountants' Students' Society of London and District by

Mr. MAURICE SHARE, B.A.,
*Barrister-at-Law.*

The chair was occupied by Sir STEPHEN KILLIK, President of the Students' Society.

Mr. SHARE said: It is a commonplace of philosophic thought that everything is in a state of flux. It was, I think, first said by a Greek philosopher called Thales, who lived thousands of years ago. Were he to spring up from the grave wherever he lies and view the state of commerce to-day, he would no doubt shake his head and say sadly, "Truly everything is in a state of flux." Perhaps he might even use the word "chaos" to characterise the state of trade to-day.

But apart from the extraordinary circumstances prevailing to-day, it is true that there have been more substantial changes in commerce since the commencement of the present century, and particularly in the last decade, than there ever have been in previous ages, and therefore it follows that there must be, that there have been, and that there will be very substantial and radical alterations in the law. The law always lags a little behind commerce in its changes, but it tends to do so now-a-days less and less. The Lord Chancellor said recently at Cambridge, "The Courts are becoming more and more concerned with social experiments. Law joins hands as never before with problems in economics, problems in political science, problems in the technique of administration." We shall be principally concerned to-night in considering, during the short time available to me, problems in economics which have found their reflection in changes in the law.

During the last two or three decades speedy and cheap litigation has been badly needed. The law, as I have said, tends to lag behind commerce in providing the requirements of commerce, but only last May a beginning was achieved in discovering improved methods of litigation by the institution of the New Procedure Rules, to which I shall have occasion to refer later, and under which, although they were only in operation actually from May 24th until July 31st, before the Long Vacation, during that period over 60 cases were set down and tried.

## ALTERATIONS IN STATUTE LAW.

I propose, first of all, to deal with a few alterations in statute law during the last few years, and, secondly, to indicate the trend of alteration so far as case law is concerned.

Since the war, one of the most important results aimed at by statute law in the realm of commerce has been the suppression of fraud and the prevention of victimisation of the public by persons who seek to take advantage of the highly complicated economic arrangements of to-day. I do not propose to-night to go through the amendments achieved by the Companies Act, 1929. That is not entirely irrelevant to a consideration of recent developments of mercantile law, but, as far as time is concerned, I take it to be somewhat outside my scope, and, in addition to that, I believe that the Society of Incorporated Accountants have already expressed rather pronounced views on possible further amendments which might be incorporated in future legislation. But one of the more important statutes of recent years which was aimed at the prevention of a particular kind of fraud was the Auctions (Bidding Agreements) Act, 1927. The object of this Act was to suppress the knock-out, which is an agreement to bid or to refrain from bidding at auctions between dealers, and dealers are defined as persons attending sales to buy for resale. The Act also renders it an offence to give or to offer gifts for refraining from bidding or for bidding, and any sale thereby induced is void unless an agreement in writing to purchase on a joint account is deposited with the auctioneer before the auction.

Another Act of recent years which was intended to prevent the victimisation of the public by a certain class of—one might call them, I suppose—professional persons is the Moneylenders Act, 1927. Several misconceptions exist as to the details of this Act, and it is necessary to point out at once that moneylenders are not restricted to an interest of 48 per cent. on their loans by the Moneylenders Act, 1927. The Act merely provides that any loan in which the interest exceeds 48 per cent. shall be *prima facie* deemed to be harsh and unconscionable, provided that there is no evidence to the contrary, but the onus is then placed on the moneylender to show that, either by reason of the nature of the security or of the heavy expenses involved in making the loan, or for some other reason, the rate exceeding 48 per cent. was not harsh and unconscionable. Very severe restrictions, however, are placed upon the activities of moneylenders by this statute. Moneylenders must annually satisfy the Justices of their continued good character in order to be granted a certificate to obtain an excise license. Their loan is unenforceable unless they provide the borrower within seven days of the making of the loan with a memorandum of the transaction, and in a number of recent decisions it has been held that the memorandum must be accurate in every particular. In *Bennett & Co.* v. *Smith* (47 T.L.R., 592) it was held that even an omission of the correct date was fatal to the validity of the memorandum. The loan is only enforceable for twelve months: it is barred after twelve months from the date of the loan or from the date of an acknowledgment in writing of the loan. Proofs for more than 5 per cent. on the principal are deferred debts in bankruptcy, and full particulars on affidavit must accompany a proof of the loan in bankruptcy.

Another extraordinary alteration of the law was effected in 1927 by the Landlord and Tenant Act of that year. I refer to that in a lecture on commercial law because it created a rather novel right in favour of tenants of commercial premises. It recognised the right of a tenant who had improved the value of his premises, and who had improved the goodwill of the premises or created a goodwill in respect to the premises, to compensation from the landlord at the end of his term. There are two kinds of compensation: one is compensation for goodwill and the other is compensation for improvements. In both cases the landlord has the option of offering a renewed tenancy. In the case of compensation for goodwill the tenant must prove that goodwill has been attached to the premises by reason of the carrying on of a trade or business at the premises for not less than five years, by reason of which a higher rent can be charged. The Act only applies to premises used for business purposes and does not apply to premises used for professional purposes, and therefore its importance as affecting the law of commerce becomes immediately apparent. Where the tenant claims that money would not compensate him for the loss of his tenancy the tribunal may award him

a new lease in certain cases. But one of the most interesting and important provisions of the Act is that contained in sect. 9. That section provides that the provisions of the Act permitting compensation for goodwill and improvements apply notwithstanding any contract to the contrary being a contract made after February 8th, 1927, except where a contract depriving a person of his rights was made for adequate consideration. That is known as the contracting-out section, and it is noteworthy that a contract made by a tenant contracting-out of his rights under the Act after February 8th, 1927, must be made for adequate consideration. Those of you who are familiar—and I have no doubt most of you are—with the elementary rules of the law of contract, know that consideration need not be adequate to the promise so long as it is of some value in the eyes of the law. This is an exception to the general rule that consideration need not be adequate to the promise. The application of this section has only been considered so far in one reported case. That case was *Holt* v. *Lord Cadogan* (1930, 46 T.L.R., 272), where it was held that a solid and valuable benefit such as relief to the tenant from the liability imposed upon him to paint the inside and outside of premises in one year and being allowed to alter the premises, not necessarily for the benefit of the landlords was adequate consideration. But frequently the difficulty is met by providing in the new lease that a tenant foregoing his rights under the Act shall pay a reduced rental.

Another Act of some importance to commerce during recent years is the Third Parties (Rights Against Insurers) Act, 1930, in which the anomalous state of affairs disclosed by *In re Harrington Motor Company* (1928, Ch., 105) and *Hood's Trustees* v. *Southern Union General Insurance Company of Australia* (1928, Ch., 793) was put right. Under those cases, moneys paid in respect of injuries to third parties to trustees in bankruptcy, liquidators and receivers of the persons responsible for the injuries were held to be distributable among the general bodies of creditors. The Third Parties (Rights Against Insurers) Act, 1930, sets right that anomalous state of affairs and provides that the whole of the moneys paid by insurance companies under policies of third party insurance shall be not distributable among the creditors of the debtor responsible for the injuries, but shall be paid direct to the person who suffered the injuries. Moreover, on the subject of third party insurance, I ought not to omit to mention sect. 35 of the Road Traffic Act, 1930, under which it is provided that every driver of a motor vehicle must be insured in respect thereof against risks to third parties under penalty of a maximum fine of £50 or three months' imprisonment and disqualification from holding a licence for twelve months from conviction, with certain exceptions, which it is hardly necessary to go into at the moment.

Now, I also should refer to the Carriage of Goods by Sea Act, 1924, which was the subject of some recent attacks in the newspapers. England was the first country to adopt the Hague Rules of 1922 as revised in Brussels in 1923. That Act limits the rights of shipowners to cover themselves by exemptions in Bills of Lading and provides certain rules which will apply to all outward-bound Bills of Lading. I do not propose to go into the details of that Act, because by now they are in every legal text-book that is in the hands of the student.

### CASE LAW.

Now, in the realm of case law it might perhaps be germane to the subject of developments in mercantile law to refer to a statement made by the President of the Manchester Law Society at the Law Society's annual meeting at Bristol in a paper on commercial case law and arbitration. He said that a great number of legal decisions which were accepted as binding to-day were out of touch with common sense. English Judges were to-day showing a tendency to satisfy reasonable demands, not by "conscious invention," but by taking into consideration the social background for each decision, as well as the state of the law. After referring to several cases, he said: "It would appear that the doctrine of *stare decisis* is becoming less and less acceptable." The doctrine to which he referred means simply the doctrine that every Judge is bound by previous decision.

It is true that mercantile law has during the present century grown and developed as much as it has during any period of its growth since the great days when Lord Mansfield adopted large branches of commercial law into the common law of this country.

In the realm of contract there have been a great number of new cases which have developed the law on well established principles. I ought to refer to one in which an attempt was made to extend the doctrine of mistake, which, as you know, avoids a contract from the beginning, to a peculiar but not an uncommon set of circumstances. I refer to the House of Lords case of *Lever Brothers* v. *Bell* (1932, A.C., 161). In that case the House of Lords by a majority of three to two reversed the decision of a unanimous Court of Appeal and of Mr. Justice Wright, as he then was. It will be remembered that two directors of the Niger Company, Limited, received sums amounting to £50,000 on the termination of service agreements with the Niger Company. They failed to disclose that they had previously entered into private transactions in breach of their agreements, and it was held that their non-disclosure under those circumstances did not avoid the contract to pay the £50,000. The importance of the case is shown by the statement of Lord Justice Scrutton in the Court of Appeal, where he said, "The present law is that where, at the time of the making of the contract, the circumstances are such that the continuance of a particular state of things is in the contemplation of both parties, fundamental to the continued validity of the contract, and that state of things substantially ceased to exist without the fault of either party, the contract becomes void from the time of such cessation, the loss falling where it lies." In that statement he was obviously referring to those well known cases which happened after King Edward's illness, which, as you will remember, postponed the Coronation, and which upset a large number of contracts for the hiring out of seats for the purpose of viewing the Coronation. It was held that money paid for such seats was not recoverable, as the loss fell where it lay, and that as the substratum of the contract was gone the contract was void. It was attempted to apply that doctrine to the particular kind of mistake that occurred in *Lever Brothers* v. *Bell*. Lord Justice Scrutton held that there was the duty of the fullest disclosure, which an agent ought to exercise towards his principal, but which in this case the agent did not exercise. Both of these findings were upset as applied to the facts of this case in the House of Lords. Lord Atkin said, "If a man agrees to raise his butler's wages, must the butler disclose that two years ago he received a secret commission from the wine merchant? And if the master discovered it, could he without dismissal and after the servant had left avoid the agreement for the increase in salary and recover the extra wages paid?" His Lordship thought not. That discloses a rather serious cleavage of opinon on the matter of commercial morality, not only between the House of Lords and the Court of Appeal but also between the members of the House of Lords themselves. The

majority appear to have held that disclosure of previous dishonesty was not essential under a contract to pay compensation for the termination of an agreement.

In *Banco de Portugal* v. *Waterlow & Sons* (48 T.L.R., 404) there was an even more startling difference of judicial opinion. This was a question of the measure of damages. It is unnecessary to deal in detail with the facts, but it will be remembered that the contract in question was a contract to print bank notes for a foreign bank. You will remember that a foreign gentleman of the name of Marang presented himself at Messrs. Waterlows and by the aid of forged credentials induced Messrs. Waterlow to print and part with large quantities of bank notes of the Bank of Portugal. All the Judges, from the High Court up to the House of Lords, held that Messrs. Waterlow had failed in their very high duty to take precautions against the wrongful use of their plates. The differences of opinion occurred as to the measure of damages payable, and the House of Lords ultimately decided that the measure was the exchange value of the genuine notes issued in place of the spurious ones. That amounted to £610,392. The opinion was expressed in some of the judgments that the damage was merely the cost of printing new notes, but this opinion did not prevail. I am not sufficiently versed in economics to express a decided opinion as to which was the more correct view. I suspect that more damage was done by the flooding of the country with those notes than could be compensated for by the mere provision of the face value of the notes; but the time is too short to deal with a question which has caused such conflict of judicial opinion.

There have been very many important cases on contract during the last four or five years. One of the most important was *Kennedy* v. *Thomassen* (1929, 1 Ch., 426), where it was held that an acceptance must be communicated—a matter on which there has been some little doubt in the cases. The vendor of some annuities executed a document for the release of the annuities and then died. The document was forwarded to the offeror after the death of the owner of the annuities. The solicitors who forwarded it did so in ignorance of her death, and £6,000 was paid as the sale price of the annuities to the solicitors of the deceased. It was held that the purchasers could not have intended their offer to be accepted merely by the execution of a document, which was all that had happened before the death of the vendor of the annuities, and therefore the £6,000 could be recovered back, as the acceptor could not communicate her acceptance, even through the medium of an agent, after her death. She died before the communication of the acceptance, and therefore there was strictly no communication.

The Courts' views on large scale combinations in industry are very well expressed in *English Hop Growers* v. *Dering* (1928, 2 K.B., 174), in which Lord Justice Scrutton said: "The Courts will view restraints of trade which are imposed between equal contracting parties for the purpose of avoiding undue competition and carrying on trade without excessive fluctuations and uncertainties with more favour than they will regard contracts made between master and servant in unequal positions of bargaining." That case involved an agreement to sell produce only through the agency of a joint marketing board, and it was held that the agreement was not void and was not in illegal restraint of trade. It is a case of the utmost importance in any consideration of the recent trend of mercantile law, because it illustrates how favourably the Courts have tended to look upon the various activities of these large scale industries.

Another case in which that point was well illustrated was *Palmolive Company* v. *Freedman* (1928, Ch., 264), in which the price maintenance activities of a big soap firm were considered. The agreement was "not to sell Palmolive soap," howsoever acquired, to the public under 6d. a tablet, and it was held that the agreement, although it was unlimited in time and in space and extended to the particular class of goods, howsoever acquired, was not in the circumstances unreasonable and in illegal restraint of trade as between the parties, and was therefore valid. As most large scale combinations commence by means of price maintenance activities, the importance of cases like that and like *English Hop Growers* v. *Dering* cannot be exaggerated.

In *Crediton Gas Company* v. *Crediton Urban District Council* (1928, Ch., 447), the Court of Appeal held that where there was no provision for the period for which a public lighting agreement was to run or no provision giving either party a right to determine the agreement, the agreements were not perpetual, but were determinable by notice.

### Cases on Impossibility of Performance.

There have been one or two interesting cases on impossibility of performance, and their importance from the commercial point of view is that of recent years the Continental doctrine of frustration of commercial contracts as avoiding contracts has come more and more to the fore in England. An interesting case of impossibility of performance was *Walton Harvey* v. *Walker & Homfrays* (1931, 1 Ch., 274), in which a local authority compulsorily took over a hotel on which an electric advertisement was displayed in pursuance of a contract to advertise. It was held that the advertisement contract was not discharged by a subsequent impossibility owing to the local authority taking over the hotel, as the parties might have provided for the compulsory taking over in their contract, and they did not do so.

The doctrine of frustration was also dealt with in the case of the *Penelope* (1928, page 180). It is a most instructive case from the point of view of the development of that doctrine in English law. It was the case of a time charter to carry successive cargoes of coal during 1926 and 1927 over a period of twelve months from South Wales ports to specified Mediterranean ports. There were various printed exceptions relating to strikes. The date of commencement was to be between May 20th and June 20th, 1926, but in May the long coal strike began and it continued until December of 1926. It was held that the strike provisions in the charter contemplated a mere local withdrawal of labour and not the total impossibility of the export of coal for upwards of twelve months, and that that impossibility frustrated the performance of the charter to its true extent. This followed the well known Coronation cases to which I have already referred and applied that doctrine of the removal of the basis of the contract as avoiding a contract to contracts of a commercial nature. The President of the Admiralty Court said it was made clear that the principle which applies where there is a "cessation of the existence of the thing which is the subject matter of the contract" applies also where there is "cessation or non-existence of an express condition or state of things going to the root of the contract."

### New Principles of Law.

Perhaps one of the most revolutionary alterations, if one may use the word, in the law of commerce might be referred to now. That is the new principle introduced by the recent House of Lords decision a few months ago of

*M'Alister & Donoghue and Another* v. *Stevenson* (1932, W.N., 139), in which a person who was poisoned owing to the presence of a dead snail in an opaque ginger beer bottle sued, not the shopkeeper, under the implied conditions in every sale of goods under the Sale of Goods Act, but the manufacturer, with whom he had no contract. It was pointed out by the House of Lords that if a person consumed the contents of such a bottle and had not bought it himself from the shopkeeper he would have no legal right against the shopkeeper, and if he could not recover from the manufacturer he would have no legal right against the manufacturer, and therefore under the present state of things there would be a wrong without a legal remedy. It was therefore decided that the manufacturer owed a duty to the consumer where a domestic article could not be intermediately examined in its passage from the manufacturer to the consumer —for example, an opaque bottle of ginger beer or a tin of sardines or salmon. Although there was no contract between the manufacturer and the consumer it was held that this liability existed, and presumably it is a liability which is commonly called tortious. Lord Atkin, I think it was, in his judgment expressly confined himself to articles of a domestic nature. Subsequently—only a month or so ago—an attempt was made to extend this novel doctrine to a case where a workman was injured owing to a defect in a crane which had not been properly assembled. The case was *Farr* v. *Butters & Co.* (1932, W.N., 171). It was held, in an action under the Fatal Accidents Act, 1846, a workman having been killed and the dependents suing under that Act, that there was a possibility of intermediate examination of the article in the passage of the crane from the manufacturer to the—I suppose one must use the word—consumer, and that, therefore, the doctrine, if only for that reason, did not apply.

I ought, in closing what I have to say on contract law, to refer to one more case—that is, *Widnes Foundry, Limited*, v. *Cellulose Acetate Silk Company, Limited* (1931, 2 K.B., 393). Those of you who are familiar with the elementary principles of contract law—and I have no doubt that that constitutes the majority of those present—will recall that a penalty clause in a contract is unenforceable, but that if such a clause provides a "genuine pre-estimate of the loss" which might result from a breach of contract, and not a penalty, it is enforceable. The curious question in this case was whether an underestimate of the loss is a penalty. It is well known that an obvious over-estimate of the loss is a penalty because it is not a "genuine pre-estimate of the loss." Can an under-estimate be said to be a "genuine pre-estimate of the loss?" The Court of Appeal solved the difficulty by deciding that in this case there had been a "genuine pre-estimate of the loss," although in actual fact there was a gross under-estimate. Mr. Justice Wright, as he then was, had given judgment for the actual amount of the loss, that is to say £5,850. The Court of Appeal reversed this decision and gave judgment under the so-called "penalty clause" for £600, as it held that there had occurred a "genuine pre-estimate of the loss."

### PRINCIPAL AND AGENT CASES.

There have been several cases of the greatest interest arising out of the law of principal and agent in the Courts during the last few years. In *Fullwood* v. *Hurley* (1928, 1 K.B., 498) it was held that an agent for the vendor must make the fullest disclosure to both vendor and purchaser that he was acting as agent for the purchaser. The House of Lords held in *Reckitt* v. *Barnett, Pembroke & Slater, Limited* (1929, A.C., 176) that where an agent was given power of attorney to draw cheques without restriction and the agent drew a cheque which was obviously for his own private and personal purposes, third parties receiving the cheque were not entitled to hold it, as such an authority does not give an agent a right to spend money for his own private and personal purposes.

The inclination of the Courts to favour the growth of big business has not extended to agency law. In the case of *Harrods Limited* v. *Lemon* (1931, 2 K.B., 57), a trading company inadvertently acted for both purchaser and vendor in two separate departments and in two separate capacities, in one as estate agent for the vendor and in the second as surveyor for the purchaser. It was held that the trading company—Harrods Limited—constituted one person in law, however many businesses it carried on, and that in acting as it did it committed a breach of its duty as agents to its principals. In fact the vendor completed the contract at a reduced price with full knowledge of the breach so that no damage was done, and it was held that no damage was recoverable and the company was in any case entitled to its commission, as it had acted honestly, but if companies act in future in that way it may be that the Courts will not hold in the way that they held in *Harrods Limited* v. *Lemon*.

A few cases on the agent's right to recover commission ought to be noticed. In *Bentall, Horsley & Baldry* v. *Vicary* (1931, 1 K.B., 253), it was held that where a property owner appointed an agent as "sole agent" to sell a particular property he had not broken his agreement by selling the property personally. On the other hand, in *Lamb* v. *Goring Brick Company* (1932, 1 K.B., 710) it was held that the contract to appoint a firm as "sole selling agent of all bricks and other materials manufactured at their works" was broken by an intimation that they would sell themselves without the intervention of any other agent. While, on the one hand, you have a contract to sell land, with an appointment of a person as sole selling agent, and that is not broken by a sale by the vendor of the land himself, on the other hand you have a commercial contract to appoint a sole selling agent of particular materials useful in commerce, and in that case a contract is broken by a personal sale by the company making the contract. Obviously, the difference is due to the fact that in commerce in recent years the tendency has been more and more to sub-divide and specialise various functions. The functions of selling and the functions of production are becoming more and more specialised, just as the division of labour has become more and more accentuated, and the Courts, of course, reflect that tendency.

There is one other important agency case that deserves notice, and that is *Martin* v. *Perry & Daw* (1931, 2 K.B., 310). In that case commission was payable to estate agents "on a sale being completed." For some unexplained reason the purchaser he found refused to complete. It was held that the estate agents were not entitled to commission as they had failed in their duty to find a purchaser who was ready and willing to complete the contract, as they were bound to do under the terms of that particular contract.

### SALE OF GOODS ACT CASES.

There have also been a number of important cases on the Sale of Goods Act during the last few years. In *Farr Smith & Co.* v. *Messers Limited* (1928, 1 K.B., 397), a memorandum for the sale of goods under sect. 4 of the Act was brought into existence in a rather unusual way. You will remember that sect. 4 of the Sale of Goods Act provides that in certain circumstances a

contract for the sale of goods of the value of £10 or upwards must be evidenced by a note or memorandum in writing signed by the person to be charged. In that case an action was commenced against a company. The company pleaded that the contract was with a partnership and the partnership pleaded that the action was against a company. Counsel in drawing up the pleadings included all the terms of the agreement, and it was held afterwards, when the action was recommenced against the company, that that pleading constituted a memorandum in writing signed by the party to be charged or his agent thereunto lawfully authorised.

In *Hall* v. *Pim, Junior, & Co.* (139 L.T., 50), an interesting decision concerning string contracts for the sale of goods is recorded. As you know, nowadays the functions of industry are being more and more specialised, and, as a result of that, there is an increasing number of middlemen between the manufacturer and the consumer. Consequently, wherever a person buys goods in commerce one expects, unless he is a retailer, he is purchasing for re-sale, with a possibility of a number of sub-sales. It was held in that case that the proper measure of damage on breach of the principal contract where a contract shows that there may be sub-contracts of sale was not merely the ordinary loss of market, but any further damage which might reasonably be supposed to be in the contemplation of the parties as the probable result of a breach. The rule is that in *Hadley* v. *Baxendale and Another* (1854, 9 Exch., 341)—to the effect that the measure of damage recoverable is that which may fairly and reasonably be considered as arising naturally, *i.e.*, according to the usual order of things, from a breach of contract or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. *Prima facie*—that is to say, in the absence of any evidence to the contrary—under sect. 51 of the Sale of Goods Act, 1893, the true measure of damages, as in every case of breach of contract to sell goods, is the difference between the contract price and the market price at the time when the goods should have been delivered, or if no time was fixed then at the time of refusal to deliver, but sect. 54 preserves the right to special damage where such is by law recoverable. The question of recovery of damages on broken sub-sales is of enormous importance in modern industry. The old and well settled view was that express knowledge on the part of the vendor of the particular sub-sale in question was absolutely essential in order to make the vendor liable for damage. This view has, however, apparently been questioned in *Hall* v. *Pim*, and Lord Justice Scrutton, in *Finlay* v. *Kwik Hoo Tong Handel Maatschappij* (1929, 1 K.B., 400), noted the conflict of authority and offered the explanation that the case was founded on the fact that the contract entered into by the seller contemplated a series of string contracts with sub-purchasers, and as Lord Justice Scrutton said, "A must be taken to have contemplated that the result of his breach of contract with B might lead to claims on B by sub-purchasers." The conflict of authority still remains, however, and it will have to be set right. Probably the view that is more in accordance with the development of modern industry is that in almost all these cases the damage to the purchaser on the sub-sales into which he has entered must be taken into account in measuring the damages to which he has been put; but the old view that express knowledge of the actual sub-sales must be shown is probably the more correct view on the law as it stands at present, and that particular principle of law provides one of those cases in which business men might very well take a different view from that which might be the more strict view of the law. In the case to which I have just referred, *Finlay* v. *Kwik Hoo Tong Handel Maatschappij*, in which Lord Justice Scrutton made those remarks, it was held that the incorrect date of shipment in a bill of lading tendered by the seller entitled the buyer to damages, and the damages were measured by the difference between the market price of the goods had the date of shipment been correct, and the contract price, and, although the contracts of sub-purchasers stated that the date of shipment in the bill of lading should be taken as conclusive, nevertheless the buyer was not bound to enforce the contracts against his sub-purchasers as that might seriously injure his reputation in a commercial sense.

### Bills of Exchange.

The only other important branch of commercial law with which I have time to deal, and with which, with your permission, I shall deal quite shortly, is Bills of Exchange. There are a number of recent cases. I do not know that there has been any great development of the interpretation of the Bills of Exchange Act, 1882. Many of you are, no doubt, familiar with that somewhat ludicrous action, *The Hong Kong and Shanghai Banking Corporation* v. *Lo Lee Shi* (1928, A.C., 181), where a Chinaman left a bank note in the pocket of his coat. It was taken to the laundry; the bank note was still in the pocket of the coat when it came back—a great vindication of Chinese commercial morality, but perhaps no great tribute to the care with which they examined the articles submitted to them. The number on the note was accidentally altered, and it was held that an accidental alteration of the number of a note was not such an alteration as avoided the bill. An alteration must be intentional in order to avoid a bill of exchange.

In another 1928 case, *Auchteroni* v. *Midland Bank Limited* (1928, 2 K.B., 294), there was an action by the payee of a bill against the acceptor's bank. The payee had endorsed the bill in blank and sent his servant to pay it into the bank. The servant collected it and absconded with the proceeds, and it was held that as there were no special circumstances of suspicion the Bank was not liable to the payee for paying to the servant.

Again, in *Lloyds Bank* v. *Chartered Bank of India* (1929, 1 K.B., 40) we have a case where a chief accountant of a bank with authority to sign cheques on its behalf fraudulently drew crossed cheques on another bank and paid them into the defendant bank in the joint names of his wife and himself, and where his practice was to draw these amounts out quickly after paying them in, and observation by the bank would have shown that he was gambling heavily on the Stock Exchange and that that was the reason why he was drawing these amounts out quickly after paying them in. It was held that the bankers lost the protection of sect. 82 of the Bills of Exchange Act, as, although they received payment for a customer and in good faith, there was negligence on their part in not observing the account.

A rather curious recent case was that of *Greenwood* v. *Martin's Bank* (47 T.L.R., 607), in which a wife's forgeries and a husband's silence about his wife's forgeries resulted in an extraordinary legal position. A wife had over a long period forged her husband's signature to cheques. The husband discovered the facts, and, thinking that he had put a stop to the forgeries, refrained from informing the bank of the forgeries for nine months. At the end of the nine months his wife asked him for more money. The husband said he would go to the bank, and that

same night the wife committed suicide. The husband then disclosed the forgeries, but the bank disclaimed responsibility, and it was held that the husband's silence prevented the bank from using its right of action against the forger and therefore, by reason of the husband's silence, the bank had been prejudiced. The husband was therefore prevented, or—to us a technical legal word—estopped, from subsequently relying on the forgeries. His action against the bank therefore failed.

*Slingsby* v. *District Bank* (1932, 1 K.B., 544) involved a singular question as to the material alteration of a cheque. The plaintiffs were executors of a will, and their solicitors were Messrs. Cumberbirch & Potts, of whom the acting member was Mr. Cumberbirch. The plaintiffs decided to invest £5,000 in certain securities, and Mr. Cumberbirch accordingly drew out a form of cheque—"Pay J. P. & Co.—or Order." The cheque was signed by the plaintiffs and left with C to be posted to J. P. & Co., Cumberbirch, of course, being the solicitor who fraudulently inserted the words "per Cumberbirch & Potts" in the blank space between the payee's name and the words "or order," and then endorsed it Cumberbirch & Potts and paid it into the account of a company in which he was interested. The account of the plaintiffs with the defendants was debited with the amount. It was held that the cheque had been materially altered, and therefore sect. 60 could not be relied on by the paying bankers. It was also held that the description of the payees "J. P. & Co. per C. & P." prevented the endorsement "C. & P." from being a regular endorsement, and therefore again there was no protection to the bank, and that in leaving a blank space between the names of the payees and the words "or order" the plaintiffs were not guilty of any breach of duty to the defendants.

Finally, in *Savory* v. *Lloyds Bank Limited.* (1932, W.N., 77), two stockbrokers' clerks, A and B, stole some of their employers' cheques and paid them into the private accounts of A and of B's wife respectively. This case raises an important point as to the duty of branch banks. They were drawn by the plaintiffs, their employers, in favour of certain jobbers, and were paid into the City offices of the banks, to be paid into the country branches to which the fraudulent clerks belonged as customers. In the paying-in slip transmitted to the country branches no information appeared as to the drawer or the payee of the cheques and no information was sought. In one case the branch bank knew that their customer was a stockbroker's clerk, but had not asked him for the name of his employers. In the other case the branch bank had not inquired, in the case of the wife, as to the occupation of the husband. It was held by the Court of Appeal that this was negligence within sect. 82 and that the branch bank ought to have made enquiries and the City branch ought to have furnished means of discovering these facts on the paying-in slips forwarded to the country branches, and the mere fact that the practice had continued for many years did not prevent it from constituting negligence.

### New Procedure Rules.

I said, when I commenced this address, that I would refer to the New Procedure Rules. No account of the recent trend of legal development would be quite complete without a reference to these Rules. As I told you, they commenced their operation on May 24th. In the little more than a month that remained before the commencement of the Long Vacation over 60 cases had been tried and disposed of. I do not know whether the result is going to increase or decrease litigation. As far as the lists published the other day are concerned litigation seems to show a decrease as compared with the amount available at the corresponding period of last year. Actions which come within the New Procedure are all actions except those in which fraud is alleged, actions for libel, slander, malicious prosecution, breach of promise of marriage and seduction. Those are cases which are pre-eminently suitable for trial by jury. As you can well see, the majority of other cases are cases of a commercial nature, and therefore the importance of the Rules as affecting the future development of commerce in this country can hardly be exaggerated, especially as it is generally accepted that arbitration is a most cumbrous and expensive method of procedure. In all other cases than those I have mentioned writs may be marked by solicitors issuing them with the words "New Procedure," and either with the writ or within seven days after the defendant's entry of appearance to the writ a statement of claim must be delivered to the defendant. Within seven days later the defendant must deliver his statement of defence, and within another seven days after that the plaintiff has to take out a summons for directions. At the summons for directions the Judge fixes a definite date for trial, orders or dispenses with a jury, according to whether the parties consent to this course being taken, records the consent of the parties wholly or partially excluding the right of appeal, and provides if necessary for proof of facts by affidavit, and has a discretion with regard to a number of other matters, in order to expedite the trial and make it cheaper. Of course, the fixing of the date for trial is the most important of these matters. In actual practice cases as a rule have been heard within four or five weeks of the issue of the writ. It will cause an immense improvement on the old procedure, and clearly the demand in commercial quarters, notably in the memorandum of the London Chamber of Commerce, for cheaper and swifter justice has not been in vain. The Lord Chancellor has promised further reforms to bring justice more into line with the demands of modern commerce, and all those who are interested in the maintenance of the law as a useful instrument of commerce will give him their best wishes in his efforts.

### General.

The general trend of law, as you have now seen, has been to follow the general development of commerce. It has favoured the growth of the trustification of industry by pronouncing that activities such as the maintenance of price levels, the provision of joint marketing boards, and the allowance of special rebates to customers dealing exclusively with a combine are not illegal and void as being in undue restraint of trade. Every effort has been made by legislation to cut down to a minimum the manifold opportunities for fraud that exist in our complicated order of society. Legislation has given more and more protection to the public against dishonesty. Again, at a time when costs are being fiercely cut in all directions, the New Procedure has been devised to secure cheaper litigation, and this is not the last of the imminent legal reforms, for, as the Lord Chancellor said at Cambridge recently, "We are now on the threshold of an epoch of profound legal transformation." Thus it is clear that the law is neither antiquated nor fossilised, but a living and dynamic force in the life of the community to-day. (Applause.)

### Discussion.

Mr. A. V. Hussey, Incorporated Accountant, said that there were two questions he would like to put: the first with reference to the Bills of Exchange Act and the second as to the Auctions (Bidding Agreements)

Act, 1927. With regard to the first, he wished to know whether the Lecturer—bearing in mind recent legal decisions whereby banks had been unsuccessful in claiming protection under sect. 82 of the Bills of Exchange Act where the face of a cheque gave a clear indication that they should be on their guard—thought that any Incorporated Accountant should, without direct instructions from the payee, draw a cheque and merely cross it "& Co.," without using the words "account payee only" and whether, in his opinion, there would be the slightest excuse for a cheque being drawn in that way, particularly by a member of their profession. In regard to the Auctions (Bidding Agreements) Act, 1927, trustees, liquidators and receivers often experienced great difficulty in realising assets to the best advantage when they entrusted such work to auctioneers, not by reason of what the auctioneer did or failed to do, but by reason of the activities of the persons who frequented the auction rooms and arranged between themselves how the bidding was to take place. Those accountants who had had experience in realisation of assets had rather thought that the 1927 Act was going to improve matters very much, but those attending auction sales conducted by firms of repute, even recently, found that the bidding often emanated from a person sitting in the front row, and was increased by that same person, merely by a nod of the head, and continued until it suited the auctioneer either to calmly say that he must withdraw the lot because it had not reached the reserve figure, or alternatively having met with success in, if he might use the expression, bluffing those in attendance that there was genuine bidding, and in consequence managing to get a much higher price than the property for sale would otherwise have fetched. He wanted the Lecturer to tell him, if he would, whether it was within the provisions of the 1927 Act for an auctioneer to conduct a sale, or to attempt to conduct a sale, and withdraw the particular lot without having made a declaration at the commencement that there was a reserve and without there having appeared on the catalogue of sale that there was a reserve on the particular property. The second point requiring to be answered was: What was likely to be the result if a purchaser went to a Court of Law with a witness and stated on oath that the bidding had been increased by one person which had resulted in others joining in and he was ultimately declared purchaser? Would the Court declare the sale invalid?

The LECTURER: I will try to answer the questions quite shortly, and I hope lucidly. The first question deals with the case of a crossed cheque which shows that there is something wrong on the face of it. Obviously the banker is put upon suspicion, and if he ignores that there has been something wrong on the face of it he is not protected by sect. 82. I do not see that there is in the case Mr. Hussey put, anything on the face of the cheque which ought to put the banker on suspicion unless there is in that particular case some circumstance which is within the banker's peculiar knowledge and which ought to put him on suspicion. With regard to the second point, under the Auctions (Bidding Agreements) Act, 1927, I think that involves two questions. One is whether the law can prevent secret agreements between bidders at auctions either to bid or to refrain from bidding. The difficulty that has been experienced in putting this Act into practice has been the same difficulty that has been experienced with regard to the Prevention of Corruption Acts, 1906 to 1916. There have been very few prosecutions, either under those Acts or under the Auctions (Bidding Agreements) Act, 1927. Agreements, as you know, can be made either by words or conduct, and I am afraid many of these agreements are made by conduct, or one may say by misconduct, and therefore they are all the more difficult to detect, and the accountant is truly placed in a very peculiar position as trustee or liquidator in employing auctioneers, and his best plan is to follow his knowledge of the world and choose his auctioneer according to that knowledge. The other question about persons attending sales as "puffers" and auctioneers announcing that sales are made without reserve is a more difficult one. The employment of a person as a "puffer" without indicating to the public attending the sale that the auctioneer reserves the right to bid is, of course, illegal, and a sale resulting therefrom is void. Moreover, if a sale of goods is subject to a reserve price, that fact should be notified before the sale. There seems to be some doubt on the authorities as to whether the auctioneer would be liable in damages to the highest bidder if he did not do so. There are numerous openings for dishonesty in all professions, including that of auctioneering. I shall not say any more about that possibility. I think the answers to both the questions which Mr. Hussey has put so lucidly and so well are that accountants will perhaps find at least as useful as a knowledge of the law a knowledge of the world andkn owledge of the people with whom they are dealing. (Hear, hear.)

Mr. HUSSEY said that he apparently had not made himself quite clear on the first question which he had put, and therefore he would like to explain briefly what had happened. He was recently asked to trace a cheque which had apparently got into wrong hands. He did not want to say who drew the cheque, but it bore the signatures of two accountants. It was ultimately traced, having been paid into the account of a person who was not entitled to it, and his (the speaker's) main point was this: had that cheque been drawn with the crossing "a/c payee only" on the face of it, he thought the bank would have been liable in allowing the cheque to go to the credit of any other account. The main point was whether or not accountants ought to keep well in mind that they ought never to draw a cheque without having the safeguard of that particular crossing unless they had previously received instructions from the payees as to what special crossing they required their cheques to be drawn with.

The LECTURER: I think that is a matter more of business precaution than law. I do not think any Court of Law would require a professional man, in drawing a cheque, in every case to draw it "Account Payee."

## Obituary.

### JAMES EDWARD COSTELLO.

We regret to announce that Mr. James Edward Costello, F.C.A., F.S.A.A., senior partner in the firm of Messrs. James E. Costello & Co., of 90, Cannon Street, London, passed away on March 22nd, at the age of 76 years. Mr. Costello was elected a Fellow of the Society nearly 40 years ago and maintained an interest in its work, especially in the London District. One of Mr. Costello's sons, Mr. L. W. J. Costello, is now a Judge of the High Court, Calcutta. When he practised in England he frequently lectured before the Incorporated Accountants' Students' Society of London. The practice of Messrs. James E. Costello & Co. is being continued by the surviving partner, Mr. Ernest G. Costello, F.C.A.

## AN INCORPORATED ACCOUNTANT'S PRIZE ESSAY.

In an address to the Royal Empire Society, Mr. Simon Rowson, a Director of the Gaumont-British Picture Corporation, gave figures showing that the operation of the quota Act of 1927 in relation to British cinematograph films had been a great success. In this connection it is interesting to record that Mr. M. P. Ferneyhough, Incorporated Accountant, Longton, shortly before the 1927 Act came into force won the prize offered by "The Cinema" for the best scheme for improving the British film trade, and it is stated that many of the points included in the Act were suggested in his essay.

# Society of Incorporated Accountants and Auditors.

## MEMBERSHIP.

The following additions to and promotions in the Membership of the Society have been completed since our last issue :—

### ASSOCIATES TO FELLOWS.

COLESWORTHY, HENRY EDWARD, A.C.A. (Barton, Mayhew & Co.), Alderman's House, Bishopsgate, London, E.C.2, Practising Accountant.

KENNY, WILLIAM ALOYSIUS (Purtill & Co. and M. Crowley & Co.), 33-34, Anglesea Street, Dublin, Practising Accountant.

LAMBERT, WILFRID HENRY (Wilde, Lambert & Co.), 24, Brazennose Street, Manchester, Practising Accountant.

MISTRY, MANECK PHEROZ (Kalyanivala & Mistry), 20, Apollo Street, Fort, Bombay, Practising Accountant.

NICHOLSON, THOMAS HOLME, A.C.A. (Saffery, Sons & Co.), 200, Gresham House, Old Broad Street, London, E.C.2, Practising Accountant.

REID, ROBERT LAUGHLIN (Purtill & Co. and M. Crowley & Co.), 33-34, Anglesea Street, Dublin, Practising Accountant.

VICKERY, HERBERT DOUGLAS (Vickery & Rowden), Hamilton Chambers, 201, Lambton Quay, Wellington, New Zealand.

WAKELING, CHARLES EDWARD, 8, Serjeant's Inn, Temple, London, E.C.4, Practising Accountant.

### ASSOCIATES.

ARDILL, WILLIAM HENRY, Clerk to Muir & Addy, 7, Donegall Square West, Belfast.

EVANS, ROBERT LESLIE, Clerk to Carter & Co., 33, Waterloo Street, Birmingham.

FARRAR, JAMES PORRITT, Clerk to E. O. Mosley & Co., 16, Bolton Street, Bury.

FLEGG, NORMAN STANLEY, Clerk to Douglas, Mackelvie and Co., Sun Building, 102-104, St. George's Street, Cape Town.

GARDINER, FREDERICK LOUIS, Clerk to F. C. Gardiner and Co., 2, Saville Street, Malton, Yorks.

HANCOCK, STANLEY, Clerk to Boaler & Flint, Bromley House, Angel Row, Nottingham.

HOLMES, CECIL LAWRENCE, Clerk to Martin & Acock, 36, Regent Street, Great Yarmouth.

JEFFREYS, THOMAS WILLIAMS, Clerk to Brinley Bowen & Mills, 22, Wind Street, Swansea.

PATEL, RABINDRANATH AMBALAL, Clerk to A. France & Co., West Bar Chambers, Boar Lane, Leeds.

PRAGER, LESLIE ISRAEL, Clerk to Saphin & Neal, Cromwell House, Fulwood Place, High Holborn, London, W.C.1.

PUMMERY, WALTER GEORGE, Clerk to Arthur E. Green and Co., 100-106, Moorgate Station Chambers, London, E.C.2.

ROBINSON, THOMAS RAYMOND, Clerk to T. G. Green, 37, Saddler Street, Durham.

ROY, DHIRENDRA NATH GUHA, Clerk to P. K. Ghosh & Co., 100, Clive Street, Central Bank Buildings, Calcutta.

SEN, SANTOSH KUMAR, formerly Clerk to M. Moustardier, 69, Downs Road, London, E.5.

STALKER, GILBERT, B.Com., A.C.A. (Richard Smith, Son and Stalker), 61, Westgate Road, Newcastle-upon-Tyne, Practising Accountant.

TINKLER, JACK, Clerk to F. Roberts & Co., 15, Guildhall Road, Northampton.

# Changes and Removals.

Mr. Edward Beal, Incorporated Accountant, has commenced public practice at 27, Portland Terrace, Southampton.

The practice of Messrs. M. O. Beale & Co., formerly carried on by the late Mr. Maurice O. Beale at 9/10, Railway Approach, London Bridge, London, S.E.1, has been taken over by Mr. G. W. Hinton, Incorporated Accountant. The firm's name and address will remain as heretofore.

Mr. Charles G. Clark, Incorporated Accountant, announces that he is removing his offices from 64, Basinghall Street to 12, Coleman Street, London, E.C.2, as from May 15th.

Mr. John Draper, of 65/70, Swan Arcade, Bradford, announces that he has taken into partnership his son, Mr. Norman Mitchell Draper. The practice will continue to be carried on at the same address under the style of John Draper & Son, Incorporated Accountants.

Mr. James A. Hulme has admitted his son, Mr. N. A. Hulme, into partnership. The practice will be continued under the style of Messrs. Jas. A. Hulme & Co., Incorporated Accountants, at 88, Mosley Street, Manchester.

Mr. Gerald J. Moore, Incorporated Accountant, has commenced to practise at Hill House, 9-12, Bachelors Walk, Dublin.

Mr. Fred. W. Smith, A.S.A.A., announces that in consequence of the death of his father, Mr. Richard Smith, he has taken into partnership Mr. W. H. Stalker, A.S.A.A., and Mr. Gilbert Stalker, B.Com., A.C.A., A.S.A.A. The practice will be carried on at Clayton Chambers, 61, Westgate Road, Newcastle-upon-Tyne, under the style of Richard Smith, Son & Stalker, Incorporated Accountants.

Mr. Stanley F. Stephens has taken into partnership his son, Mr. S. G. Stephens. The firm will continue to practise in the name of Stanley F. Stephens & Co., Incorporated Accountants, at New Hibernia Chambers, London Bridge, London, S.E.1.

Messrs. Amsdon, Son, Wells & Jackson, Chartered Accountants, 22, Walbrook, London, E.C.4, and elsewhere, announce that Mr. Albert E. Cohen, A.C.A., has been admitted into partnership. Mr. Frank R. Porter, A.C.A., has also been admitted a member of the firm at Croydon and Beckenham. They further announce that they have re-opened an office at 9, Woodcote Road, Wallington.

Messrs. J. W. Barratt & Co., Chartered Accountants, of London and Birmingham, announce that they have admitted into partnership as from March 31st, 1933, Mr. J. H. Honeyman Brown, A.C.A., who has been a member of their staff for many years. The practice will in future be carried on under the style of Barratt, Brown & Co.

## NEW YORK STOCK EXCHANGE AND AUDIT OF ACCOUNTS.

The following is the text of a letter addressed by the President of the New York Stock Exchange to every company whose securities are listed :—

"The New York Stock Exchange has recently announced its intention of requiring audited statements in connection with listing applications made after July 1st, 1933. The public response to this announcement indicates clearly that independent audits are regarded by investors as a useful safeguard.

"If, however, such a safeguard is to be really valuable and not illusory, it is essential that audits should be adequate in scope and that the responsibility assumed by the auditor should be defined. The Exchange is desirous of securing from companies whose securities are listed, and which now employ independent auditors, information which will enable it to judge to what extent these essentials are assured by such audits. In furtherance of this end, we should be greatly obliged if you will secure from your auditors, upon the completion of the audit for the year 1932, and furnish to the committee on stock list, for its use and not for publication, a letter which will contain information on the following points :—

"1. Whether the scope of the audit conducted by them is as extensive as that contemplated in the federal reserve bulletin, *Verification of Financial Statements*.

"2. Whether all subsidiary companies controlled by your company have been audited by them. If not, it is desired that the letter should indicate the relative importance of subsidiaries not audited, as measured by the amount of assets and earnings of such companies in comparison with the total consolidated assets and earnings, and should also indicate clearly on what evidence the auditors have relied in respect of such subsidiaries.

"3. Whether all the information essential to an efficient audit has been furnished to them.

"4. Whether in their opinion the form of the balance sheet and of the income, or profit and loss, account is such as fairly to present the financial position and the results of operation.

"5. Whether the accounts are in their opinion fairly determined on the basis of consistent application of the system of accounting regularly employed by the company.

"6. Whether such system in their opinion conforms to accepted accounting practices, and particularly whether it is in any respect inconsistent with any of the principles set forth in the statement attached thereto.

"I shall personally appreciate very much your prompt consideration of this matter and any co-operation which you may extend to the Exchange in regard thereto."

The letter was accompanied by a statement prepared by a special Committee of the American Institute of Accountants on co-operation with Stock Exchanges. The bulletin *Verification of Financial Statements* referred to above was issued by the Federal Reserve Board.

A group of American accountants, comprising several firms whose clientele embraces listed companies, have prepared the following joint response to the foregoing letter :—

"As auditors of a substantial number of corporations whose securities are listed on the New York Stock Exchange, we have received copies of the letter in relation to audits addressed by you to such companies under date of January 31st. We are anxious to do everything in our power to assist the Exchange, and it has seemed to us that it will be helpful and more convenient to the Exchange for us to deal with some of the general phases of the subject under consideration collectively in a single letter, reference to which will make it unnecessary to discuss these points in the letters which we shall in due course furnish to our clients and which they in turn will presumably furnish to the Exchange for its confidential use.

"We fully recognise the importance of defining the responsibility of auditors and of bringing about a proper understanding on the part of the investing public of the scope and significance of financial audits, to the end that their importance should not be underrated nor their protective value exaggerated in the minds of investors. This is the more necessary because the problem of delimiting the scope of audits or examinations is essentially one of appraising the risks against which safeguards are desirable in comparison with the costs of providing such safeguards. The cost of an audit so extensive as to safeguard against all risks would be prohibitive ; and the problem is, therefore, to develop a general scheme of examination of accounts under which reasonably adequate safeguards may be secured at a cost that will be within the limit of a prudent economy. The position was clearly stated by a partner in one of the signatory firms in 1926 as follows :

> "'In any such work we must be practical ; it is no use laying down counsels of perfection or attempting to extend the scope of the audit unduly. An audit is a safeguard ; the maintenance of this safeguard entails an expense ; and this expense can be justified only if the value of the safeguard is found to be fully commensurate with its cost. The cost of an audit so extensive as to be a complete safeguard would be enormous and far beyond any value to be derived from it. A superficial audit is dangerous because of the sense of false security which it creates. Between the two extremes there lies a mean, at which the audit abundantly justifies its cost.'

"We are in accord with the general concept of the scope of an examination such as would justify the certification of a balance sheet and income account for submission to stockholders which is implied in the reference to the bulletin *Verification of Financial Statements* contained in the first question asked by the exchange. That bulletin was designed primarily as a guide to procedure which would afford reasonable assurance that the financial position of the borrower was not less favourable than it was represented by him to be ; and as the bulletin explicitly states, it was not contemplated that such an examination would necessarily disclose under-statements of assets (and profits), resulting from charges to operations of items which might have been carried as assets, or defalcations on the part of employees.

"This latter point is particularly applicable to financial examinations of larger companies which, generally speaking, constitute the class whose securities are listed on the New York Stock Exchange. Such companies rely on an adequate system of internal check to prevent or disclose defalcations, and independent accountants making a financial examination do not attempt to duplicate the work of the internal auditors.

"The bulletin *Verification of Financial Statements*, to which reference has been made, was, as was clearly pointed out in the first edition, framed to fit the case of borrowers engaged in business on a relatively small or medium-sized scale. It was recognised in that bulletin (see paragraph 131 of the present edition) that an effective system of internal check would make some portions of the procedure outlined in the bulletin unnecessary. Naturally, the larger a corporation and the more extensive and effective its system of accounting and internal check, the less extensive is the detailed checking necessary to an adequate verification of the balance sheet. Since companies listed on your exchange are among the larger corporations, it is in general true that the procedure in examinations of annual accounts is less detailed in the case of those companies than in the class of cases which the framers of the bulletin had particularly in mind. It is, however, true, we think, that the examinations made by independent auditors in such cases, coupled with the system of internal check, constitute at least as effective a safeguard as is secured in the case of smaller corporations

having a less adequate system of internal check, in the examination of which the procedure outlined in the bulletin has been more closely followed.

"The ordinary form of financial examination of listed companies, in so far as it relates to the verification in detail of the income account, is not, we believe, so extensive as that contemplated by the bulletin. To verify this detail would often be a task of a very considerable magnitude, particularly in the case of companies having complex accounting systems, and we question whether the expense of such a verification would be justified by the value to the investor of the results to be attained. The essential point is to guard against any substantial overstatement of income, and this can be reasonably assured by the auditor satisfying himself of the correctness of the balance sheets at the beginning and end of the period covered by his examination, and reviewing the important transactions during the year.

"The second point on which information is requested in your letter to listed companies relates to subsidiary companies. This question is obviously pertinent, and presents no difficulty to the accountant called upon to reply to it.

"The third question, calling for a statement whether all essential information has been furnished to the auditors, contemplates, we take it, that the auditors shall indicate whether all the information which they have deemed essential and sought has been furnished to them. It is obviously conceivable that a management might be in possession of information which would have a material bearing on the accountant's view of the financial position if he knew of its existence, but that the auditor might have no way of discovering that such information existed.

"Your fourth question relates to the form in which the accounts are submitted. We take it that you desire to be informed whether the accounts in the opinion of the auditor set forth the results fairly to the extent that they purport to do so, and that the inquiry does not go to the question whether regard for the interests of the stockholders calls for more detailed statements of the financial position and the operations of the company than those now given. The question how much information should be given to stockholders is one on which wide differences of opinion exist, and it is not our understanding that the exchange is attempting to deal with this point in this inquiry.

"Referring to the fifth question—we attach as great importance as the Exchange evidently does to consistency of method in the presentation of financial statements by corporations. The only further comment on this question which seems called for is to emphasise the part which judgment necessarily plays in the determination of results, even if principles are consistently adhered to. There would, we take it, be no objection to an accountant answering the fifth question in the affirmative, even though in his opinion the judgment of the management had been somewhat more conservative at the close of a year than a year earlier, or *vice versa*. We think it well to mention this point and to emphasise the fact that accounts must necessarily be largely expressions of judgment, and that the primary responsibility for forming these judgments must rest on the management of the corporation. And though the auditor must assume the duty of expressing his dissent through a qualification in his report, or otherwise, if the conclusions reached by the management are in his opinion manifestly unsound, he does not undertake in practice, and should not, we think, be expected to substitute his judgment for that of the management when the difference is not of major importance, when the management's judgment is not unreasonable, and when he has no reason to question its good faith.

"Your sixth question, apart from the specific reference to the principles enumerated, aims, we assume, to insure that companies are following accounting practices which have substantial authority back of them. Answers to this question of an affirmative character will not, of course, be understood as implying that all of the clients of a given firm observe similar or equally conservative practices, either in the case of companies engaged in the same industry, or in the case of different industries, or even that the accounting principles adopted are precisely those which the accountant would have himself selected had the sole choice rested with him.

"We agree with the five general principles enumerated in the memorandum attached to your letter, but it may, we suppose, be understood that rigorous application of these principles is not essential where the amounts involved are relatively insignificant. We mention this point not by way of any substantial reservation but to avoid possible later criticism based on narrow technicalities.

"We shall be glad, if desired, to go further into any of the questions herein discussed, in such way as may be most convenient to the Exchange."

[For the text of the letters we are indebted to the *Journal of Accountancy*, New York.]

# Correspondence.

## DISPOSAL OF OLD RECORDS.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—No doubt many of your subscribers are often faced with the problem, either for their clients or themselves, as to when old records can and should be destroyed. Is there any settled professional practice in this matter?

Yours faithfully,
W. DOUGLAS MENZIES.

Kingston-upon-Thames.
*April*, 1933.

[There is no settled practice. The question is one that has to be decided according to the circumstances of each particular case.—EDS., *I.A.J.*]

## LOSSES OF SUBSIDIARY COMPANIES.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—Sect. 126 (1) of the Companies Act, 1929, lays down, *inter alia*, that the statement to be annexed to the balance sheet of a holding company must show what provision has been made for the losses of a subsidiary . . . in the accounts of that company. Sub-sect. 3 defines losses in this connection as meaning the losses shown in any accounts of the subsidiary company made up to a date within the period of the holding company's accounts. Presumably the Act means the balance on the profit and loss account for that year. I cannot see any other meaning, just as I fail to see how provision can be made for such a loss in the accounts of the subsidiary company. Perhaps it all depends on the meaning of the word "provision." If so, perhaps someone will kindly explain what it means and at the same time tell us what that dreadful phrase "best of their information" is supposed to convey.

Why must not an auditor state the position according to the worst of his information or the second best? Perhaps if he did, there would not be these occasional revelations of the inadequacy of auditors' reports, some of which revelations give the impression that "best of their information" was taken to mean "the best construction that could be put on their information."

Yours truly,
W. F. WHELAN.

London, *April*, 1933.

[A loss incurred by a subsidiary company for any year can obviously be provided for out of reserves or

undistributed profits brought forward. The second paragraph of the letter hardly calls for comment.—EDS., *I.A.J.*]

### ARREARS OF CALLS.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—The capital of a company is £20,000. Calls unpaid amount to £1,500. These calls are long outstanding. Many of them are considered bad and irrecoverable. Some of them are even time barred. Is it necessary under the circumstances for the auditor certifying the balance sheet to refer to this matter in his report to the shareholders or to insist that some provision against this deficiency of calls be provided out of the profits for the year? The management is opposed both to any reference in the report as well as provision out of profits for the following reasons:—

(1) An outstanding on account of calls is not a trading debt and hence there is no need to show in the balance sheet the extent to which this is considered bad or doubtful.

(2) A provision against doubtful or bad debts would be justified only where omission to provide for such deficiency of floating asset would have the result of overstating the profits and also the particular asset in the balance sheet. In case of calls such deficiency does not enter into the profit and loss account, but is a deficiency of capital.

(3) None of the calls can be really considered time barred for—

(*a*) A company, if it is authorised by its Articles, can sue the shareholders after forfeiture of the shares;

(*b*) Upon liquidation, the liquidator can still recover calls which may be time barred as regards the company, for upon the liquidation fresh rights and liabilities between the shareholder and the company arise under the Companies Act.

Are the management right in their contentions? What is the recognised duty of an auditor in such circumstances?

"ARCADIA."

[The unpaid calls are not debts due in relation to the carrying on of the business of the company, and the usual course is to show them as a deduction from the issued capital and carry out the difference. The Articles of a company usually contain a power of forfeiture and if this power is exercised the amount paid up on the shares so forfeited should be shown as a separate item on the balance sheet until the shares are re-issued.—EDS., *I.A.J.*]

## Society of Incorporated Accountants and Auditors.

### Award of Gold Medals.

The Council have awarded Gold Medals in respect of the examinations held in 1932 to Mr. William Dale Bramwell (Clerk to Mr. B. Halsey, Durban, South Africa), and Mr. Frank John Riches (Clerk to Messrs. F. W. Palmer & Co., Norwich). These candidates were bracketed for First Certificates of Merit in the Final examination, November, 1932.

## Incorporated Accountants' South Wales and Monmouthshire District Society.

### ANNUAL DINNER.

The annual dinner of the Incorporated Accountants South Wales and Monmouthshire District Society was held in the Whitehall Rooms, Park Hotel, Cardiff, on April 7th. The PRESIDENT (Mr. Norman E. Lamb), was in the chair, and amongst those present were: The Lord Mayor of Cardiff (Alderman Charles F. Sanders, J.P., F.S.A.A.), the High Sheriff of Glamorgan (Mr. T. E. Morel, J.P.), the Mayor of Newport (Councillor W. J. Wall, J.P.), Mr. E. Cassleton Elliott (President, Society of Incorporated Accountants and Auditors), Mr. R. Wilson Bartlett, J.P. (Vice-President), Captain Arthur Evans, M.P., Mr. John Allcock, O.B.E. (City Treasurer), Mr. F. J. Alban, C.B.E. (President, South Wales and Monmouthshire District Society of the Chartered Institute of Secretaries), Dr. D. W. Oates, M.A., Mr. O. Temple Morris, M.P., the Mayor of Merthyr (Councillor H. I. Williams, J.P.), Mr. F. H. Dauncey (Registrar, Newport County Court), Captain F. W. Cutcliffe (President, Newport Chamber of Commerce), Mr. A. A. Garrett, M.A. (Secretary, Society of Incorporated Accountants and Auditors), Lieut.-Colonel R. C. L. Thomas (Vice-President, South Wales and Monmouthshire District Society), and Mr. Percy H. Walker (Hon. Secretary).

Mr. JOHN ALLCOCK, O.B.E. (Past President of the District Society) proposed the toast of "Trade, Commerce and Industry." Mr. Allcock said that although some people present might think the toast superfluous on account of the debilitated condition of trade and commerce, he was inclined to be optimistic, because, in spite of its weakness, trade was by no means dead. Some of the reasons for his optimism were found locally in the facts that a big flour mill was being built on Cardiff dockside, the Great Western Railway Company was spending a huge sum of money on Cardiff Railway Station, a new air service had been started from Cardiff to Devonshire the chairman of Baldwin's Limited had made comments that were encouraging, and the results of the colloidal fuel experiments were eminently satisfactory. In the Welsh coalfields, moreover, there had been a great change in outlook. Whereas ten or twelve years ago there had been a daily fear of strikes, lock-outs and kindred troubles, to-day a more reasonable attitude prevailed. Commercial minds were actively engaged in trying to discover some solution to the present difficulties, and while all might not be right, they had to guard against pessimism. Matters would be made much worse and recovery greatly retarded if they indulged in the unnerving practice of self-pity.

The HIGH SHERIFF OF GLAMORGAN (Mr. Thomas E. Morel, J.P.) responded. He said he belonged to a body of men who thought that the only thing they had left as commercial men was their commercial honesty and probity. It was those qualities that had pulled them through and given them courage to face the manifold difficulties they had encountered. They had been helped greatly by the Incorporated Accountants, who, to a large extent, had the commercial morality and probity of the country in their custody. The Incorporated Accountants, the people who felt the pulse of the financial world, were only too fully aware of the difficulties facing many firms. The outlook was black, but there were

some bright spots in Glamorgan. In Swansea a considerable amount of activity was noticeable, while the steelworks of Port Talbot and the tinplate works of Briton Ferry were fairly active. It had been said that there was less hard bargaining over prices, and orders had been following quotations very quickly for some time past. People in commercial life would know that that was a very encouraging sign. In the coal and shipping trades, however, the outlook was not too promising. Owing to the onerous conditions of the Mines Act, with a fixed minimum price of coal out of relation to world prices, and the quota system, the best coals of South Wales could only be worked three or four days a week. Coal was badly hit by the oil menace. Quite recently ships of his fleet had been changed from coal burners to oil burners, and in his mature judgment he believed the navies of the world and the liners would not go back to coal until the armies returned to bows and arrows. The shipping trade was in such a position that people with longer experience than his were filled with apprehension. In two years freights had gone down 25 per cent. in spite of the fact that the laid-up tonnage had increased from nine millions to fourteen millions. It was no use crying "All is well" when everything was not well. They had to face the position and use all the means in their power to obtain again the ascendency this country once enjoyed. He sincerely believed that if they displayed the courage, grit and determination of their forbears, the men who made Cardiff, they would win back the lost ground.

The LORD MAYOR OF CARDIFF (Alderman C. F. Sanders, F.S.A.A.), who also responded, said that with all his pessimism, the High Sheriff still had a little faith in Cardiff. So had he. They had only to compare Cardiff as it was to-day with the Cardiff of any other day, either the Cardiff of ten years ago or the Cardiff of seventy years back, to realise that the city was better than ever before. Speaking of international affairs, the Lord Mayor said he was anxious to see war debts and reparation payments swept away. If international debts were written off, the individual holders would still have to be recompensed, but if it was left to every country to deal with the individual holders of its I.O.U.s, it would mean that money would be circulated freely within the borders, instead of the wealth of one country being sent away to become stagnant, useless, gold in the coffers of another. Moreover, a way must be found to pull down the tariff barriers and let trade flow freely from land to land. Two years ago we had not sufficient gold in this country, and we were not able to pay our debts. To-day we were overwhelmed with money, and did not know what to do with it. We had too much money and we were not using it. We needed to get it moving, to get the wheels of trade moving, to get everything moving again, and it was time we set to work in grim earnest. He wanted to see Cardiff people who had their money locked away bring it out and start new industries, however humble, and to watch them extend and spread.

Captain ARTHUR EVANS, M.P., proposing the toast of "The Society of Incorporated Accountants and Auditors," said he was indeed honoured to have the privilege of proposing the toast of a Society whose members bore the heavy responsibility of certifying the high moral integrity of British commerce and industry throughout the world. In an age of "taking things for granted" some were apt to forget the great responsibility which Incorporated Accountants were called upon to bear, and it was a great tribute to the high standing of British accountants that their word received unqualified acceptance throughout the whole world and that on their bare signature alone vast sums of money were invested in industry. He ventured to think that when a prospective investor closely examined a prospectus the first thing he gave his attention to was the certificate of the Incorporated Accountant. That was not a light responsibility which members of their profession were called upon to bear. He congratulated the Society on its membership, which had reached the 6,000 mark, and ventured to suggest that the Society's strength was in no small measure due to the very high standard of professional conduct on which it insisted and on the high standard of examinations, which were regarded as of paramount importance by Government Departments and municipalities alike. He had only to recall such names as Sir Josiah Stamp and Sir Malcolm Ramsay (the former Comptroller and Auditor-General of the Exchequer) to realise that in the ranks of their Society were numbered some of the most important and distinguished economists of the day. When acting as Aide-de-Camp to Admiral of the Fleet Lord Jellicoe during his Canadian tour he was privileged to meet many of their Canadian members in Ottawa, Montreal and other big cities, who took the same keen interest in the welfare of their Society as did the home members. The country owed a great deal of gratitude to the accountants who played such a prominent part in the negotiations which recently took place at the Empire Conference, and upon whose reports agreements were based. He was authorised to say that His Majesty's Government was particularly conscious of the very excellent and invaluable work which Sir James Martin, Mr. Thomas Keens, Mr. Henry Morgan and other members of the Society had done on public and national committees. The proximity of the Budget prompted him to turn his thoughts in that direction. The world confidence in our national finances, and in our capacity and determination to balance our Budget, had been restored to such an extent that the difficulty had not been to prevent the falling of the value of sterling abroad, but on the contrary to use the Equalisation Fund Account to keep the value of sterling at its present low level. Therefore, he thought the Chancellor of the Exchequer in particular, and the country in general, was entitled to take and enjoy the fruits of the enormous load we had been called upon to bear last year. The time had now come for taxation to be lowered as much as possible. In view of the world confidence in our position and resources, contributions to the Sinking Fund could well be suspended for the time being, although we had to realise of course that had it not been for the sum in the region of thirty-one millions which tariffs brought in and the twenty-nine million odd saved through the conversion scheme, our financial position would not be as good as it was. Nevertheless, he thought that the accepted principle that high taxation defeated its own purpose as soon as the revenue from a particular source decreased in volume, was as true now as it ever had been, and no one would deny that the high water mark of taxation had been reached long ago. He sometimes imagined himself as the Chancellor of the Exchequer saying to the officials of the Treasury that this year he did not propose to base the capacity of the taxpayer to raise revenue solely upon the estimated requirements of expenditure submitted by the various Government Departments, but to base it on the capacity of the people to pay having regard to the enormous competition which existed throughout the world at the present time. He sincerely hoped that the members of their Society would not be backward in impressing the Government with the absolute and vital necessity of doing something practical to achieve a reduction in the national expenditure. It was his privilege to associate with the toast the name of Mr. E. Cassleton

Elliott, one which commanded admiration and respect, not only because he was an honours man in the Society's examinations, but because of the very active part he had played in representing the Society at the International Congress of Accountants in Amsterdam, and at a later period in New York, and his normal activities not only in the City of London but also on the Continent of Africa. (Applause.)

Mr. E. CASSLETON ELLIOTT (President of the Society of Incorporated Accountants and Auditors), responding, said the Member for Cardiff South had made a speech which he thought would ensure Captain Evans's continuation in the seat for many years to come, so that he might have the opportunity of putting into practice the ideas he had adumbrated. There was not the slightest doubt that businesses generally were carried on in exactly the way suggested by Captain Evans. Each business prepared a budget, and never prepared the expenditure side without reference to the income. He was obliged to Captain Evans for the way he had referred to Incorporated Accountants. He still felt, after travelling in a few parts of the world, that there was no country like the British Isles for commercial probity. So far as the South Wales and Monmouthshire Society was concerned, it was one of the strongest connected with the Society of Incorporated Accountants, and that was very largely due to the excellent educational work for the profession performed in the area. The members in South Wales and Monmouthshire took their work very seriously with the result that their articled clerks did extraordinarily well. With the exception of London, and London was an exceptional district, they secured more honours in the South Wales and Monmouthshire Society than in any other Society connected with the Parent body. The President congratulated the Lord Mayor of Cardiff upon the degree which was to be conferred upon him in July by the University of Wales, when he would be created a Doctor of Laws. It was excellent that the degree should be conferred on him because law was closely associated with accountancy. Wales had produced many fine men for the Society. About ten years ago the Vice-President of the Parent body was Captain Gwilym Evans, who, unfortunately, died during his period of office. It had also produced another Vice-President in Mr. R. Wilson Bartlett, who was with them that evening. Moreover, Mr. Henry Morgan, the immediate Past President, was born in South Wales, and in the profession they knew full well his sterling worth during an anxious period. Speaking of taxation, the President said it was his considered opinion that any money spent on research should be a legitimate charge before arriving at the profit of any firm. Only a week before he had been reading a report of Imperial Chemical Industries, Limited, a concern which had made a wonderful recovery and had increased profits solely through research. Another interesting feature was that Imperial Chemicals had restored the "cuts" in wages brought into effect eighteen months before. The extra money received by the workpeople would nearly all be spent, and would have the effect of helping trade and industry.

Mr. NORMAN E. LAMB (President of the South Wales and Monmouthshire District Society) proposed the toast of "The Visitors." He said they were honoured and gratified by the presence of so many distinguished guests, and they acknowledged the ability and services that brought them their distinction. They also paid tribute to their other guests who gave place to none in the quality of their friendship.

Mr. O. TEMPLE MORRIS (M.P. for Cardiff East) replying, said the greatest token of confidence in commercial life was efficiency. They as a Society prescribed examinations which gave Incorporated Accountants the hall mark of efficiency. One of the greatest dangers to-day was the amateur accountant who was not qualified. When there were associations of men there were amalgamations of ideas, and when they had a society like theirs, working for the efficiency of its profession, it directly and indirectly worked for the efficiency of commerce and our great country.

Dr. D. W. OATES, M.A. (Newport) also spoke in response, and said that of all professional men none occupied a more honoured place than the accountant, because he served the best interests of the community. It was one of the main functions of the profession to bring knowledge to the service of power. The accountant was not only the watchdog of the shareholders. he was also the watchdog of sound commercial and industrial development, and therefore of social welfare. Through his knowledge of the past and the adaptation of methods of economic growth and through his habit of deliberation he provided a stabilising influence against the crude forces of impulse and ill-advised enthusiasm.

# District Societies of Incorporated Accountants.

## BELFAST.

### Annual Report.

#### MEMBERSHIP.

The total number of members is 177, consisting of 18 Fellows, 54 Associates and 105 Student Members, as compared with a total membership of 170 last year.

#### EXAMINATIONS.

The examinations of the Parent Body were held at Belfast in May and November. Ten candidates succeeded in passing the examinations in May and twenty in November.

#### NEW HEADQUARTERS.

The new Meeting Room and Library of the Society at Coates' Buildings, Castle Street, Belfast, was formally opened on December 16th, 1932, by Mr. E. Cassleton Elliott, President of the Parent Society. The room and library are available to students and members for study and reference purposes, and the students' meetings are now held there. The room has been furnished in a very comfortable manner and it is felt that its acquisition will prove of great advantage, particularly to the student members. The room can also be utilised by any member for the purpose of holding meetings of creditors, &c., and is extremely suitable for this purpose.

#### ANNUAL DINNER.

The annual dinner was held in the Grand Central Hotel, on December 16th, 1932. Mr. D. T. Boyd, President, occupied the chair. There was a record attendance of members, and the Committee are glad to note that for the first time a large number of student members were present.

#### STUDENTS' SOCIETY.

The annual meeting was held on October 6th, 1932. The following Officers and Committee were elected for the session:—President, Mr. Frederick Allen, F.S.A.A.; Vice-President, Mr. Arthur S. Courtney, A.S.A.A.; Hon. Secretary, Mr. L. McCullagh; Hon. Treasurer, Mr. H. McMillan, A.S.A.A.; Committee: Mr. T. A. C. Agnew,

Mr. J. W. Baird, Mr. E. G. Cowzer, Mr. R. Dunlop, Mr. W. R. Ford, Mr. T. A. Leonard, Mr. W. C. Lutton, Mr. W. H. Palmer, Mr. J. A. Reilly, Mr. W. T. Scott and Mr. W. Smyth.

The following lectures were held during the year :—

"Partnership Accounts," by Mr. Herbert McMillan, A.S.A.A.

"Rendering of an Income Tax Form," by Mr. W. H. Palmer.

"Should a Balance Sheet Tell ?" by Mr. Robert Bell, F.S.A.A.

"The Money Market," by Professor F. T. Lloyd-Dodd, M.A., D.Sc.

"Insolvency," by Mr. J. Stanley Lewis, A.S.A.A.

Debate : Should Railways be Subsidised by the State ? *For :* Mr. E. G. Cowzer. *Against :* Mr. T. A. C. Agnew.

No students' dinner was held this year, as it was thought better to amalgamate this function with the annual dinner of the District Society, and the fine attendance of students at the Society's dinner confirmed the wisdom of this decision.

GOLF COMPETITIONS.

The annual golf competition for the Booth Cup was held at Brown's Bay on May 30th. The Booth Cup and Prize presented by Mr. D. T. Boyd were won by Mr. G. R. Crawford, the runner-up prize being won by Mr. H. McMillan. In the afternoon a nine hole consolation Stroke was held, the prize presented by Mr. Robert Bell being won by Mr. N. A. Noble. On June 28th a match was held between teams representing His Majesty's Inspectors of Taxes and the members of this Society. This meeting proved a great success and it is hoped that it will become an annual fixture. The autumnal golf competition for the Allen Cup held at Cliftonville was won by Mr. J. A. Winnington, Mr. W. C. Watson winning the runner-up prize.

MONTHLY LUNCHEONS.

The following papers were read at the monthly luncheons :—

"Elementary and Secondary Education," by Major Rupert Stanley, B.A., LL.D.

"Practical Probate Points," by Mr. Robert Baillie.

Visit of the President, Mr. E. Cassleton Elliott, and Representatives of other District Societies.

"Corporation Finance," by Alderman James A. Duff, J.P.

"The University and Commerce," by Sir R. W. Livingstone.

COMMITTEE.

The members of the Committee retiring this year are : Mr. Frederick Allen, Mr. E. A. Anderson, Mr. H. Andison, and Mr. S. Boyle, who are eligible and offer themselves for re-election.

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## BENGAL.

The inaugural meeting of the Incorporated Accountants' Bengal and District Society, which has been formed with the approval of the Council, was held in Calcutta on March 10th last. The model rules were adopted, as approved by the District Societies Committee of the Society of Incorporated Accountants and Auditors. A Committee of nine members was elected, and the following officers were appointed :—President, Mr. M. L. Tarmaster ; Vice-Presidents, Mr. S. R. Batliboi and Mr. S. O. Alldridge ; Secretary, Mr. S. K. Ghosh ; Treasurer, Mr. G. Basu ; Hon. Auditors, Messrs. S. K. Day & Co.

## NEWCASTLE-UPON-TYNE.

### Annual Report.

The Committee have pleasure in submitting their report for the year ended March 31st, 1933, and desire to place on record a very cordial expression of thanks to the gentlemen who gave lectures last session.

MEMBERSHIP.

The membership at March 31st, 1933, was 35 Fellows, 174 Associates and 173 student members, a total of 382, as compared with 372 at March 31st, 1932.

It is with great regret that your Committee have to report the deaths during the past year of Mr. Richard Smith, who had been a member of the Committee since the formation of the District Society, and after having been in turn Hon. Treasurer, Hon. Auditor, and Hon. Secretary, occupied the Presidential chair for a period of 21 years ; Mr. W. T. Walton, J.P., of West Hartlepool, a former Vice-President of the District Society ; Mr. William Hughes, of Sunderland, a member of the Committee for many years ; and Mr. Alexander Brodie, of Middlesbrough.

LECTURES.

The following meetings and lectures were held :—

*At Newcastle-upon-Tyne :*

"Income Tax," by Mr. W. J. Lofthouse, A.S.A.A., H.M. Inspector of Taxes.

"Law of Contract," by Mr. R. M. Beckwith, Solicitor.

"Economics in Real Life," by Mr. C. Ralph Curtis, B.Sc. (Econ.).

Debate with the Middlesbrough Students' Section. Subject : "Are the duties of an Auditor as laid down by the Companies' Act, 1929, adequate ?"

"Examination Hints on Company Accounts," by Mr. Wilfrid H. Grainger, F.S.A.A.

*At Middlesbrough :*

"Allowances for Wear and Tear, Obsolescence and Replacements," by Mr. W. J. Lofthouse, A.S.A.A., H.M. Inspector of Taxes.

"Law of Contract," Part 2, by Mr. R. M. Beckwith, Solicitor.

"The Report on the Industrial Conditions of the North East Coast," by Mr. E. D. McCallum, M.A., Lecturer in Economics, Armstrong College.

"Verification of Stock in Trade," Debate with Newcastle Students.

"Municipal Finance—A Hotchpot," by Mr. R. D. Lambert, F.S.A.A., Borough Treasurer of West Hartlepool.

"The Gold Standard," by Mr. C. Ralph Curtis, B.Sc.

"Rationalisation," by Mr. E. Allan, M.A., Lecturer in Economics, Armstrong College.

"The Services of Accountants in relation to duties and liabilities of Executors and Trustees," by Mr. R. C. L. Thomas, F.S.A.A., M.C., T.D.

"The Auditor's Report," by Mr. C. L. Hamer, F.S.A.A.

Mock Income Tax Appeal.

It will be seen that excellent fare was provided in the Middlesbrough area during the past winter. The attendance, particularly on the part of the students, was disappointing. New ground was broken this year with two debates between students from Newcastle and Middlesbrough areas. Both debates were splendidly attended and provoked excellent discussions. The support received from many qualified members has been of the greatest possible encouragement.

EXAMINATIONS.

During the year thirteen students passed the Final examination and eighteen the Intermediate.

LIBRARY.

Considerably more use of the library is being made by members, and the number of books issued during the year was 160.

COMMITTEE.

The following retire by rotation, but are eligible for re-election :—Mr. T. W. Scollick, Mr. J. E. Spoors, Mr. W. H. Stalker, and Mr. J. Telfer.

PARENT SOCIETY AND BRANCHES.

The President, Mr. Groves (Vice-President), the Hon. Secretary, the Librarian (Mr. White), and Mr. C. Percy Barrowcliff represented the District Society at the official dinner of the Society held in the Guildhall in April, 1932, and the President attended the official functions of various Northern District Societies during the winter.

## NORTH LANCASHIRE.

(BURNLEY AND DISTRICT STUDENTS' SECTION.)

The first annual meeting of members of the Incorporated Accountants' Burnley and District Students' Society was held on April 6th, when there was a large attendance. Mr. Wm. Ashworth, F.S.A.A., presided. The retiring members of the Committee were re-elected, and Mr. Livesey Haworth and Mr. John Harvey Ashworth were added. The Chairman made a brief review of the successful work of the session. Several proposed items for the 1933-34 programme were discussed, and it was decided to adopt an inter-society debate, an evening of students' lecturettes, and a prize essay scheme.

## SOUTH WALES AND MONMOUTHSHIRE.

(CARDIFF AND DISTRICT STUDENTS' SECTION.)

Mr. J. D. R. Jones, F.S.A.A., Newport, was the lecturer at the last meeting of the session held on April 5th. Mr. K. S. Williams, A.S.A.A., occupied the chair, and there was a good attendance of members. The Lecturer took as his subject, "Preparation for Examinations." At the outset he recommended the engagement of a coach in preference to private study, and urged upon the student strictly to follow the course planned out for him. The main points dealt with in the course of an interesting lecture included : (1) the importance of, time for, and method of study ; (2) seeking and utilisation of knowledge ; (3) preparation for examinations ; and (4) procedure in the examination room. In connection with the General Commercial Knowledge paper, the Lecturer said that the best sources from which to obtain commercial and general knowledge were the *Incorporated Accountants' Journal*, the financial columns of the Press, monthly reviews by bankers, and discussions and talks on the wireless. Regular attendance at the meetings of the Students' Section, especially participation in the Prize Essay Scheme, was strongly recommended for the benefit of students in general.

At the close of the meeting the results of the Prize Essay Scheme for the session 1932-33 were announced as follows :—For the best papers :—1st prize : Mr. D. R. Carston (Paper on "Unemployment") ; 2nd prize (divided) : Mr. E. J. Wade (Paper on "The Bank of England and its Relation to National Finance") ; Mr. G. M. Richards (Paper on "The Accounts of—(1) A Pawnbroker ; (2) A Bookmaker"). For the best contribution to the discussions : Mr. J. T. Jones.

# QUESTIONS IN PARLIAMENT.

### Income Tax.

On April 3rd, Mr. PIKE asked the Chancellor of the Exchequer whether he will consider the exemption from Income Tax of income remitted to the United Kingdom by British subjects resident in India and other tropical countries, who are obliged to maintain an establishment at home on account of their health or for reasons of their children's education ?

The FINANCIAL SECRETARY TO THE TREASURY (Mr. Hore-Belisha) : This matter has been considered on several occasions in recent years, but as the suggestion involves discrimination in favour of a particular class of taxpayers it has not been found possible to give effect to it.

Mr. PIKE : Will the Right Hon. Gentleman say whether the additional expense is not due in many cases to the compulsory nature of the employment of those persons, and will he not reconsider his attitude towards them ?

Mr. HORE-BELISHA : Yes, Sir. My Right Hon. Friend is always willing to consider any proposal. The Hon. Member will see that he is inviting discrimination in favour of persons living in tropical countries and having an establishment in this country as against persons living in other countries.

Mr. PIKE : Is the Financial Secretary not aware that in the majority of cases, those persons are living in tropical countries because their employment compels them to be there ?

### Bankruptcies.

On April 3rd, Major NATHAN asked the President of the Board of Trade the total number of insolvencies for each of the years to February 28th, 1931, February 29th, 1932, and February 28th, 1933, so far as evidenced by the aggregate number during each of those periods of the orders for the compulsory winding up of companies, resolutions for the voluntary winding up of companies on the grounds of inability to meet liabilities, receiving orders made in bankruptcy, and deeds of arrangements and deeds of composition.

Dr. BURGIN, pursuant to his reply, supplied the following statement :—

The following table gives the number of—

(*a*) Orders for compulsory winding up of companies ;

(*b*) Resolutions for the voluntary winding up of companies without declaration of solvency ;

(*c*) Receiving orders in bankruptcy ;

(*d*) Deeds of arrangement and deeds of composition ;

in England and Wales for the periods mentioned :—

| Period. Twelve months ending— | (*a*) | (*b*) | (*c*) | (*d*) | Total. |
|---|---|---|---|---|---|
| February 28th, 1931 | 362 | 1,547 | 4,209 | 2,331 | 8,449 |
| February 29th, 1932 | 388 | 1,604 | 4,469 | 2,656 | 9,117 |
| February 28th, 1933 | 354 | 1,494 | 4,634 | 2,787 | 9,269 |

### Income Tax (Mortgage Interest).

On April 4th, Mr. LIDDALL asked the Chancellor of the Exchequer whether he will consider amending the Income Tax law so as to abolish the existing situation where mortgagees in possession of land, by reason of the mortgagors' bankruptcy, are rendered liable for Income Tax upon

an annual value which in fact they have never received owing to their inability to let the said land?

Mr. CHAMBERLAIN: For the purposes of the Income Tax Acts, there is no distinction between the case where land is in the possession of a mortgagee and that where it is in the occupation of the owner, not do I see any reason for seeking to draw any such distinction. If, however, my Hon. Friend will furnish me with particulars of any case in which he considers that the present law creates serious hardship, I will inquire into the matter.

## Reviews.

**Receivers for Debenture Holders Appointed without the Aid of the Court.** *By A. C. Hooper, Solicitor. London: Gee & Co. (Publishers), Limited, 8, Kirby Street, E.C.1. (92 pp. Price 6s. net.)*

A useful feature of this publication is that there is no confusion between the position of receivers appointed by the Court and those appointed outside the Court, as Mr. Hooper's book deals with only the latter. The matter is well classified and clearly expressed. Information is given on many points that arise in everyday practice such as the powers of the receiver to take possession, to carry on the business, his power of sale and of leasing and making compromises or arrangements; likewise his borrowing powers and right of distress. There is a table of cases and a good index.

**A Simplified Guide to Rating and Assessment in London.** *By Dennis R. Cockshaw. London: Gee & Co. (Publishers), Limited, 8, Kirby Street, E.C.1. (70 pp. Price 3s. 6d. net.)*

This is a companion book to the previous publication by the same author of a simplified guide to rating and assessment outside London. Amongst the matters dealt with are rateable occupation, recovery of rates, and the principles of assessment. Advice is also given as to the method of dealing with objections to, and appeals against assessments, an appendix of forms being supplied with the particulars filled in showing how the various notices relating to objections and requisitions should be dealt with.

**Don'ts for Articled Clerks and Young Practitioners.** *By Harry C. King, F.S.A.A. London: Gee & Co. (Publishers), Limited, 8, Kirby Street, E.C.1. (52 pp. Price 2s. 6d. net.)*

Some very sound advice is given in this little booklet and both articled clerks and those commencing public practice in the profession will find their time well spent in perusing it.

**Company Law in a Nutshell.** *By J. A. Balfour, Barrister-at-Law. London: Sweet & Maxwell, Limited, 2/6, Chancery Lane, W.C.2. (82 pp. Price 3s. 6d. net.)*

The information contained in this little book is highly condensed. It is classified under a few main headings and in lieu of an index the headline to each paragraph is printed in heavy type. For instance, under the heading of "Transfer and Transmission" will be found Restriction on Right to Transfer, Certification of Transfer, How Certification is done, Forged Transfers, Share Warrants, Transmission on death, bankruptcy, lunacy, &c.

**Accountants' Pitfalls.** *By Herbert Priestley, F.S.A.A. Sydney: Metropolitan Business College, Limited, 6, Dalley Street. (44 pp. Price 1s.)*

This little booklet consists of a reprint of lectures delivered by Mr. Priestley at Sydney under the auspices of the Metropolitan Business College. The full title is "Pitfalls to be Avoided and Heights to be Scaled during the career of an Accountant," and the wide experience and reputation of Mr. Priestley are an adequate guarantee that the pamphlet is well worthy of perusal by all who are engaged in the accountancy profession. Amongst the items of advice which Mr. Priestley gives are the following:—

"Cultivate a distinctive, convincing and tactful style and never allow presupposition to cloud your critical faculties."

"There is no occasion to exhibit the merciless hardness of a diamond drill."

"An intuitive perception of the best way of approach and what is the correct thing to do and say when dealing with persons or circumstances is at all times a valuable asset."

"Before signing any certificate you will avoid many pitfalls by making sure that the statements you have examined are substantially reliable."

## AN UNSTAMPED DOCUMENT.

In an action by trustees for repayment of £1,000 which they averred had been advanced by the late Mr. Robert Simpson to the defender (a relative) on loan, the pursuers produced along with the summons a document in which the terms and conditions of the loan were said to be contained. The document was in two, consisting first of a letter from the father of the defender to the testator, dated March 4th, 1920, and, secondly, of a docquet written and signed by the defender.

In the letter the father of the defender applied to the late Mr. Simpson for an advance of £1,000 in favour of the defender, and made certain proposals for financing the payment of interest on the advance. The docquet was in the following terms:—"I acknowledge receipt of the sum of one thousand pounds. I certify that the above is my father's signature."

In the Outer House, Lord Moncrieff held that the document founded on by the pursuers, so far as it contained the writ of the defender, fell to be regarded as a receipt, and that in view of the fact that it was unstamped it could not be produced or made available in evidence. His Lordship granted leave to reclaim.

When the case was called in the procedure roll Counsel for the defender, who had then for the first time seen the principal document, pointed out that it was unstamped. He maintained that, on a sound construction of the docquet, and in view of the provisions of sect. 101 of the Stamp Act of 1891, the document fell to be regarded as a receipt. If the document was in fact a receipt, it was not disputed that, under the provisions of the statute, it could not be after-stamped, and was not available to be put in evidence.

The Division recalled the interlocutor of the Lord Ordinary, and remitted to him to proceed.

The Lord Justice Clerk said the question in the case was whether the document founded on by the pursuers was a receipt within the meaning of the Stamp Act, 1891, which could not be after-stamped, or was on the other hand an acknowledgment of agreement, which could be after-stamped. That question, in his Lordship's opinion, was foreclosed by the decision in the case of *Welsh's Trustees* in 1885. The Court there held that the document under review was not a receipt within the meaning of the Stamp Act, 1870, and since the relevant provisions of the Stamp Act, 1891, were in substance

identical with those of the Act of 1870, that case was binding on the Court unless the document here could be distinguished from the document in *Welsh's Trustees*. Only one difference between the two documents existed, and was founded upon by the pursuers. It was maintained for the defender that the words "in loan" in the document in *Welsh's Trustees* made all the difference in the result. In the first place, his Lordship was not satisfied that, if the words "in loan" had been absent in that case the decision would have been different. In any event there were equivalent words in the earlier part of the document here which afforded intrinsic evidence of loan. The document must be treated as a whole. It acknowledged receipt of £1,000, and, on looking back to see what the £1,000 was, one found that it was the sum to be lent by Robert Simpson to the defender. The result was equivalent to an express mention of loan in the body of the document. The language was not so succinct as in *Welsh's Trustees*, but the meaning was none the less clear. The case was ruled by *Welsh's Trustees* to the effect of deciding that the document here was not a receipt.

Lords Hunter and Anderson concurred.

# Scottish Notes.

(FROM OUR CORRESPONDENT.)

### Solicitors (Scotland) Bill.

This Bill, which is to consolidate and amend the law relating to solicitors in Scotland, has passed the second reading and at present is being considered by the Scottish Committee. So far as the Bill refers to the objects stated in the Memorandum, especially in the provisions for the appointment of a Discipline Committee, the function of which is stated to be "to hear any application to strike a solicitor off the roll of solicitors and to investigate any complaints against the solicitor for professional misconduct," accountants can leave this to the legal profession as being one of domestic interest. When, however, the Bill proposes to restrict the work of professional accountants, and to render them liable, at the instance of the legal Discipline Committee and others, to be prosecuted under severe penal clauses—it does appear as if these provisions go too far, and it is not surprising that they are being strenuously opposed by the Scottish Chartered and Incorporated Accountants.

### Company Law Amendment.

That there was no particular hurry for amending the Companies Act, 1929, was the opinion expressed by Sir Thomas Kelly, LL.D., President of the Glasgow Institute of Accountants and Actuaries, at the annual meeting of that body held on March 27th last. It was understood that this view was held by the responsible authorities, and that it was likely that some time at any rate would elapse before any official move for amendment took place. In the meantime the influence of professional accountancy opinion might probably go a long way to meet certain of the points which had been brought to the front by recent events. This, of course, more particularly applied to the methods of stating accounts. He thought it was already evident that the influence of the profession in this direction was bearing fruit, and it was to be hoped that as time passed the pressure of the best opinion in the profession would lead to the statement of company accounts in such a shape as to afford to the public all such information as was desirable and legitimate.

### A Liquidation Question.

In a recent case which came before the Second Division of the Court of Session, a company had been charged to pay upon an extract decree held by a creditor and had failed to pay. The creditors then petitioned for the liquidation of the company. Answers were lodged by the company, in which they explained that under circumstances mentioned, if they were allowed time it was confidently anticipated they would be able to discharge the petitioning creditor's claims in full. The Division granted the prayer of the petition. The Lord Justice Clerk said the position taken up by the company in its answers was that they could not pay the debt at the moment, but, assuming that the Court saw fit to give them a delay of several months, they hoped that one of their debtors would make such a payment as would enable them to pay the petitioner. The first difficulty in the way of the company was presented by the view that the Court had no discretion, in a petition of this sort, to refuse it in circumstances corresponding to those which existed here. He did not express any view upon that, and would assume that the Court, in exceptional circumstances, might exercise its discretion to the effect of allowing a petition to stand over for a space of time. It was obvious that such a discretion, if it existed, would only really be exercised in exceptional circumstances, and his Lordship was quite satisfied that no sufficient reason had been shown in this case for refraining from granting the prayer of the petition. He could not think there was any reasonable certainty of payment of this debt at the end of three months, having regard in particular to the fact that no security was offered and that no loan had been obtained by the Company during the six weeks that the case had been in Court. Therefore, so far as the main part of the petition was concerned, he should be in favour of granting it. With regard to the liquidator, his Lordship thought it was in accordance with the practice of the Court that when exception was taken to the liquidator nominated in the petition a neutral liquidator would be appointed, and that would be done.

# Notes on Legal Cases.

[The abbreviations at the end of each of the cases refer to the following law reports, where full reports of the case may be found. The Law Reports and other reports are cited with the year and the Division, *e.g.* (1925) 2 K.B. :—

T.L.R., *Times Law Reports*; *The Times*, *The Times* Newspaper; L.J., *Law Journal*; L.J.N., *Law Journal* Newspaper; L.T., *Law Times*; L.T.N., *Law Times* Newspaper; S.J., *Solicitors' Journal*; W.N., *Weekly Notes*; S.C., *Session Cases* (*Scotland*); S.L.T., *Scots Law Times*; I.L.T., *Irish Law Times*; J.P., *Justice of the Peace* (*England*); L.G.R., *Knight's Local Government Reports*; B.& C.R., *Bankruptcy and Company Cases*.

The other abbreviations used in modern reports are H.L., House of Lords; A.C., Appeal Court (House of Lords and Privy Council); C.A., Court of Appeal; Ch., Chancery Division; K.B., King's Bench Division; P., Probate, Divorce and Admiralty Division; C.S., Court of Session (Scotland); J., Mr. Justice (King's Bench or Chancery); L.J., Lord Justice; L.C., Lord Chancellor; M.R., Master of the Rolls; N.I., Northern Ireland; P., President of Probate, Divorce and Admiralty.]

## EXECUTORSHIP LAW AND TRUSTS.

### In re Ogden; Brydon v. Samuel.

*Gift for Political Bodies.*

A testator gave to a named person by his will 4 per cent. of the residuary estate "to be by him distributed among such political federations, associations or bodies in the United Kingdom having as their objects, or one of

their objects, the promotion of Liberal principles in politics, as he shall in his absolute discretion select, and in such shares and proportions as he shall, in the like discretion, think fit."

It was held that as on the evidence there was within a specified area a class of bodies which was within the description required, and which was capable of being ascertained, the gift was not void for uncertainty, and that, when the bodies had been selected from the proper field, the gift to them would be an absolute gift for the purposes for which they existed.

(Ch.; (1933) 49 T.L.R., 341.)

## INSOLVENCY.

### In re A Debtor (No. 49 of 1932).

*Affidavit Verifying Petition.*

By sect. 147 of the Bankruptcy Act, 1914, no proceeding in bankruptcy will be invalidated by any formal defect or irregularity unless the Court is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.

Where an affidavit verifying a petition was sworn and the petition was signed the day before the act of bankruptcy (non-compliance with a bankruptcy notice), it was held that the irregularity did not invalidate the proceedings as no substantial injustice had been caused.

(Ch.; (1933) W.N., 87.)

## REVENUE.

### Wiggins v. Watson's Trustees.

*Income of Beneficiary under Settlement.*

A father executed a settlement whereby he covenanted to pay to the trustees during the joint lives of himself and his son, then a minor, an annuity to be held by the trustees upon trust for the son, with power during the minority to apply the annuity for the maintenance, education and benefit of the son and to accumulate any surplus income. The settlement contained a power for the settlor with the consent of any one of several persons (including the trustees) to revoke the trusts thereby declared. The settlor duly paid the annuity and deducted income tax therefrom at the appropriate rate.

It was held by the House of Lords, affirming the decision of the Court of Appeal (see *Incorporated Accountants' Journal*, November, 1932, p. 62), that as there had been no revocation the annuity was income of the son for purposes of relief from tax, and that the power of revocation did not make it payable "for some period less than the life of the child" within the meaning of sect. 20 (1) of the Finance Act, 1922.

(H.L.; (1933) 49 T.L.R., 326.)

### In re Grinlinton; Public Trustee v. Grinlinton.

*Settlement Estate Duty.*

On the death of an annuitant, to whom an annuity free of duty was given by a will, payable out of the income of the residuary estate, the interest receivable under sect. 14 (*b*) of the Finance Act, 1914, for the period between August 15th, 1914, and the death of the annuitant on the amount of settlement estate duty paid in respect of the slice of the estate representing the annuity will belong to the persons entitled to the residue, their estate being the one that has suffered by the payment of interest.

(Ch.; (1933) 1 Ch., 344.)

### Glanely v. Whiteman.

*Stud Farm.*

The appellant owned a stud farm and was assessed to income tax under Schedule B in respect of the occupation of the land. He was also assessed under Schedule D in respect of fees paid for the services of his stallions.

It was held by the House of Lords, reversing the decision of the Court of Appeal (see *Incorporated Accountants' Journal*, November, 1932, p. 62), that as the occupation of the land was for the purpose of a stud farm, and as the use of the stallions was not separable from the purpose of the occupation, the appellant was not assessable under Schedule D.

(H.L.; (1933) 49 T.L.R., 356.)

### Rhodesia Railways, Limited, v. Bechuanaland Collector of Income Tax.

*Repair and Renewal of Railway Track.*

The profits earned by that part of the appellant company's railway undertaking which was operated in the Bechuanaland Protectorate were liable to income tax in the Protectorate. Owing to the generally worn state of the track the appellants completely relaid 33¼ miles of track, the new line being of the same weight as the old line. On a further 40¼ miles of the track the old rails were relaid, but new sleepers were put in—steel sleepers for 38¼ miles and wooden sleepers for two miles. In their accounts for the year to September 30th, 1930, the appellants debited a sum of £252,174 as "renewals of permanent way." The income tax collector disallowed that deduction, and his decision was upheld by the Special Court of the Protectorate.

It was held that the expenditure was an outgoing "not of a capital nature" and was "expended for the repairs of property occupied for the purpose of trade or in respect of which income is receivable" within sect. 15 (1) (*b*) of the Bechuanaland Protectorate Income Tax Proclamation, 1922, and was, therefore, under the section, an allowable deduction for income tax purposes.

(P.C.; (1933) 49 T.L.R., 376.)

### Wahl v. Inland Revenue Commissioners.

*Unsettled Estate Duty Claims.*

The appellant's father and brother died intestate, leaving him sole next-of-kin, and he took out letters of administration to both estates. As such administrator he received both those estates chiefly in the form of cash and he invested the money—which was paid into a bank into his own name—in industrial securities. He was assessed to super tax in respect of the income from those securities. During the periods covered by the assessments there were admittedly unsettled claims outstanding for estate duty. There was not sufficient evidence that the income from the securities had been appropriated by the appellant to his own use, and in those circumstances it was held that the income of the securities in the hands of the appellant remained income received by him in his capacity as administrator and was not assessable to super tax as his own income.

(H.L.; (1933) 49 T.L.R., 379.)